

# **General Terms and Conditions**

## **Blueworldpixel Photography / Elmar Laubender**

In case of discrepancies between the German and English versions, the German version shall prevail.

Preamble

These General Terms and Conditions govern the collaboration between the photographer and the client. They are intended to ensure a fair and transparent balance of interests and form the basis for photographic, videographic and other visual commissioned work.

Unless otherwise agreed in writing in an individual case, these General Terms and Conditions apply to all assignments, offers, deliveries, services and grants of usage rights by the photographer.

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### **I. Definitions**

#### 1. Photographic Work

The term “photographic work” refers to all works and work results created by the photographer on behalf of the client. This includes, in particular, photographs, photo series, videos, drone footage, virtual tours, digital image editing, retouching, staging-related visualisations, layouts, concepts and other visual content in analogue or digital form.

#### 2. Photographer

The “photographer” is the person commissioned to create the photographic, videographic or visual work, namely Elmar Laubender / Blueworldpixel Photography. The term also includes, where applicable, photo designers, videographers, drone operators and any assistants or third parties engaged by the photographer.

#### 3. Client

The “client” is the natural or legal person who orders or commissions the photographic work from the photographer.

#### 4. Parties

The “parties” are the photographer and the client.

#### 5. Copy / Image File / Work Copy

A “copy”, “image file” or “work copy” means any analogue or digital reproduction of the photographic work, in particular on paper, data carriers, storage media, computer hard drives, cloud storage, websites, real estate platforms, social media platforms, printed materials, presentations, exposés or other online and offline media.

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### **II. Commissioning and Execution of the Photographic Work**

#### 1. Design and Artistic Freedom

Subject to any express written instructions from the client, the creative, technical and artistic execution of the photographic work shall remain at the discretion of the photographer. This applies in particular to image composition, perspective, lighting, visual language, selection of images, editing style, technical means and the manner of implementation.

## 2. Use of Assistants and Third Parties

The photographer is entitled to engage assistants, drone operators, retouchers, service providers or other suitable third parties for the execution of the assignment.

## 3. Equipment

The photographic and post-production equipment required for carrying out the assignment shall generally be provided by the photographer, unless otherwise agreed in writing.

## 4. Client's Duty to Cooperate

The client is obliged to provide all information, locations, rooms, objects, items, access, permits and persons necessary for carrying out the assignment in good time and in suitable form.

For real estate assignments, the client is in particular responsible for ensuring that the property is ready for photography at the agreed time. This includes, in particular, orderliness, cleanliness, accessibility, prepared rooms, removal of personal items and an appropriate presentation of the property for the photographs or videos.

## 5. Delay, Postponement or Cancellation by the Client

If the client postpones or cancels an agreed appointment less than two working days before the scheduled date, or if the client fails to fulfil their cooperation duties in good time, the photographer shall be entitled to reimbursement of all costs already incurred, including any third-party costs.

In addition, the photographer may charge an appropriate cancellation fee. Unless otherwise agreed, this shall amount to 50% of the fee agreed for the relevant appointment.

## 6. Weather-Related Postponements

If an appointment has to be postponed due to adverse weather conditions, in particular for exterior shots, drone footage or other weather-dependent productions, an alternative date shall be arranged where possible.

If a weather-related postponement occurs less than two working days before the appointment and costs have already been incurred by the photographer or a substantial time slot has been reserved, the photographer may charge appropriate compensation, unless otherwise agreed in writing.

## 7. Place of Performance and Delivery

The place of performance shall be the photographer's place of business. Unless otherwise agreed, delivery of the photographic work shall be made digitally by download link, online gallery, cloud transfer or a comparable electronic transmission method.

If the client requests physical delivery on data carriers or printed products, shipping costs and transport risks shall pass to the client upon handover to the shipping service provider.

## 8. Selection and Editing

The selection of the final images to be delivered shall be made by the photographer, unless otherwise agreed. Non-selected raw files, unedited files, RAW files, project files, editing files or other working files are not part of the delivery unless their release has been expressly agreed in writing

### **III. Fees, Payment Terms and Retention of Rights**

#### 1. Fees

The agreed fee is, where applicable, exclusive of statutory VAT and any additional costs, expenses, travel expenses, parking fees, permits, accommodation costs or third-party costs.

#### 2. Payment Period

Unless otherwise agreed in writing, invoices are payable within 10 days from the invoice date without deduction.

#### 3. Late Payment

In the event of late payment, the photographer is entitled to charge reminder fees, default interest and any collection or legal enforcement costs.

#### 4. Usage Rights Only After Full Payment

The granting of usage rights shall only take effect after full payment of all amounts due. Until full payment has been received, the client is not entitled to publish, pass on, reproduce or otherwise use the photographic work, unless otherwise agreed in writing.

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### **IV. Liability of the Photographer**

#### 1. Limitation of Liability

The photographer shall only be liable for intentional or grossly negligent conduct. Liability for slight negligence, indirect damage, consequential damage, loss of profit, data loss or other indirect losses is excluded to the extent permitted by law.

This limitation of liability also applies to employees, assistants, subcontractors and third parties engaged by the photographer.

#### 2. Technical Failures and Force Majeure

The photographer shall not be liable for service failures or delays resulting from force majeure, illness, accident, technical defects, weather events, official restrictions, drone flight bans, data transmission problems or other events beyond the photographer's control.

#### 3. Notice of Defects

The client must notify the photographer in writing of any defects within six working days from delivery of the photographic work, stating the defects in a comprehensible manner. If no written notice of defects is received within this period, the photographic work shall be deemed approved.

#### 4. Rectification

In the event of justified defects, the photographer shall first have the right to rectify the defect. Further claims by the client are excluded to the extent permitted by law.

## V. Copyright, Usage Rights and Use by the Client

### 1. Copyright

All copyrights and related rights in the photographs, videos and other visual works created by the photographer shall remain with the photographer.

The client shall receive only those usage rights that are expressly granted in the respective offer, contract or invoice.

### 2. Scope of Usage Rights

The client may use the photographic work only for the agreed purpose, within the agreed scope, for the agreed period and in the agreed media.

If no period has been expressly agreed, the duration of use shall be determined by the purpose of the specific assignment.

For real estate assignments, unless otherwise agreed in writing, use is limited to the marketing of the specific property photographed.

### 3. No Further Use Without Consent

Any uses not expressly granted remain reserved. Without the prior written consent of the photographer, the client is in particular not entitled to:

- \* use the photographic work for other properties, projects, companies or campaigns;
- \* pass the photographic work on to third parties;
- \* grant usage rights to third parties;
- \* sell, license or commercially exploit the photographic work;
- \* use the photographic work in image databases, stock platforms or AI training systems;
- \* use the photographic work outside the agreed purpose.

### 4. Transfer to Third Parties

The transfer of the photographic work to third parties, in particular to real estate agents, owners, property managers, architects, interior designers, agencies, platform operators, the press, partner companies or other service providers, is only permitted insofar as this is necessary for the expressly agreed contractual purpose.

Any further transfer, sublicensing or independent use by third parties requires the prior written consent of the photographer.

### 5. Copyright Notice

The client must credit the photographer as the author in a suitable form when publishing the work, provided that this is customary in the industry, technically possible and reasonable.

Unless otherwise agreed, the copyright notice shall read:

© Elmar Laubender / Blueworldpixel Photography

If an agreed or customary copyright notice is omitted, the photographer may claim appropriate compensation.

## 6. Use Contrary to Agreement

Any use of the photographic work that has not been agreed or that is contrary to the agreement shall oblige the client to pay an appropriate additional licence fee.

Further claims by the photographer remain reserved, in particular claims for injunctive relief, information, damages, disgorgement of profits and reimbursement of legal enforcement costs.

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## VI. Editing, Alteration and AI-Assisted Use

### 1. Consent Requirement for Edits

Any editing, alteration, transformation, extension, technical further processing or other modification of the delivered image files requires the prior written consent of the photographer.

This applies regardless of whether the editing is carried out manually, automatically, software-based or by means of artificial intelligence.

### 2. AI-Assisted and Generative Editing

Without the express prior written consent of the photographer, the client is not permitted to alter, extend, reinterpret or use the delivered photographs, videos or other visual works, in whole or in part, as the basis for new image compositions by means of AI-assisted, generative or other software-based processes.

This applies in particular to:

- \* artificial intelligence;
- \* generative image editing;
- \* virtual staging;
- \* digital furnishing;
- \* replacement or addition of furniture or interior elements;
- \* alteration of architecture, spatial effect or lighting atmosphere;
- \* removal, addition or replacement of image elements;
- \* sky, window, floor, wall or environment replacement;
- \* style transfers;
- \* automated retouching;
- \* image extensions;
- \* compositing;
- \* the creation of derivative image versions.

### 3. Notice Regarding Usage Rights and AI Editing

The delivered photographs and video files may only be used within the agreed scope of use. Any subsequent editing, alteration, extension or transformation — in particular through artificial intelligence, generative image editing, virtual staging, digital retouching or other software-assisted interventions — is only permitted with the prior written consent of the photographer and may be subject to additional licence fees.

### 4. Special Provision for Real Estate Photography

Photographs delivered as part of a real estate assignment may only be used for the agreed marketing of the respective property.

Any subsequent alteration of the images, in particular through AI-assisted staging, digital redesign, replacement or addition of furniture, architecture, lighting atmosphere, surroundings or other image elements, is not permitted without the prior written consent of the photographer.

Additional editing, alteration or further usage rights must be agreed separately and remunerated separately.

## **5. No Use for AI Training**

The use of the photographic work, delivered files or derivative versions for training, developing, improving or populating AI systems, image generators, databases, machine learning models or similar systems is prohibited without the express prior written consent of the photographer.

## **6. Additional Licence Fees**

The photographer may charge an additional licence fee for the granting of any editing, alteration, AI usage or further usage rights.

Any subsequent consent shall apply only to the specifically agreed scope and shall not constitute a general right to further editing or use.

## **7. Unauthorised Editing**

In the event of unauthorised editing, AI-assisted alteration or any other unauthorised modification of the photographic work, the photographer is entitled to prohibit further use and to claim appropriate additional compensation.

Further legal claims remain expressly reserved.

## **8. Real Estate Use Restriction**

For real estate assignments, unless otherwise agreed, the use of the delivered images is limited exclusively to the marketing of the specific property photographed. Any transfer to third parties or use for other properties, projects or campaigns requires the prior written consent of the photographer.

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# **VII. Third-Party Rights**

## **1. Persons**

If specific persons are to be photographed or filmed as part of the assignment, the client is responsible for ensuring that these persons have consented to being photographed or filmed and to the subsequent use of the photographic work within the agreed contractual purpose.

## **2. Objects, Rooms and Locations**

If the client provides the photographer with specific objects, rooms, buildings, works of art, trademarks, designs, interiors, properties or other locations to be photographed or filmed, the client is responsible for ensuring that no third-party rights prevent the creation and use of the photographic work.

### 3. Permits

The client is responsible for obtaining any necessary permits, approvals, access rights, house rights, drone flight permissions or other authorisations, unless these have been expressly assumed by the photographer.

### 4. Indemnification

If the client breaches the above obligations, the client shall indemnify the photographer against all third-party claims and compensate the photographer for all resulting costs, damages, expenses, settlement payments, legal enforcement and defence costs.

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## VIII. Use by the Photographer / Self-Promotion / References

### References and Self-Promotion

The photographer is entitled to refer to the collaboration with the client and to the photographic, videographic or other visual work created for the client as a reference.

This applies in particular to publications on the photographer's own website, in portfolios, on social media channels, in presentations, printed materials, exhibitions, competitions, press materials and in conversations with existing or potential clients.

The photographer is entitled to use selected works for his own advertising, reference and presentation purposes, provided that no legitimate interests of the client conflict with such use or that no deviating agreement has been made in writing prior to commissioning.

If the client requires confidential treatment, an embargo period or a complete exclusion of reference use, this must be agreed in writing before the assignment is commissioned. The photographer may charge a separate fee for this.

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## IX. Archiving and Data Backup

### 1. Archiving

The photographer is not obliged to permanently archive delivered or non-delivered files unless otherwise agreed in writing.

### 2. Data Backup by the Client

After delivery, the client is responsible for backing up the delivered files.

### 3. Subsequent Delivery

Subsequent delivery of files already delivered is only possible if these files are still available to the photographer. The photographer may charge an appropriate processing fee for this.

## **X. Data Protection and Confidentiality**

### 1. Data Protection

The photographer processes the client's personal data only for the purposes of order processing, communication, invoicing, archiving and statutory retention obligations.

### 2. Confidentiality

Confidential information disclosed to the photographer in the course of an assignment shall be treated confidentially. This applies in particular to unpublished real estate, private premises, internal business documents or sensitive client information.

### 3. Exceptions

The duty of confidentiality does not apply to information that is publicly known, has been lawfully disclosed by third parties or must be disclosed due to legal obligations.

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## **XI. Final Provisions**

### 1. Written Form

Amendments, supplements or deviating agreements to these General Terms and Conditions require written confirmation by the photographer.

Email or other verifiable electronic forms of communication shall also be deemed to satisfy the written form requirement.

### 2. Severability Clause

Should any provision of these General Terms and Conditions be wholly or partially invalid or unenforceable, the validity of the remaining provisions shall remain unaffected.

The invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the economic purpose of the original provision.

### 3. Applicable Law

Contracts between the client and the photographer shall be governed exclusively by Swiss law.

### 4. Place of Jurisdiction

The exclusive place of jurisdiction, to the extent permitted by law, shall be the photographer's place of business.

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