

# DIZ München GmbH

## Süddeutsche Zeitung Photo – Terms and Conditions

### A General

1. These General Terms and Conditions are applicable to all licence agreements, offers for such agreements, deliveries and electronic transmissions by Süddeutsche Zeitung Photo, a service of Dokumentations- und Informationszentrum München GmbH ("DIZ").
2. These Terms and Conditions also apply to any future dealings between DIZ and Principal without the need for their express repeated incorporation.
3. Dissenting Terms and Conditions of Principal are not accepted. This also applies if Principal refers to such Terms and Conditions when placing the order.
4. Any special agreements require confirmation in text form to be valid.
5. DIZ's offers are subject to change. Contracts on services to be rendered by DIZ are only concluded upon confirmation of order in text form respectively confirmation of licence in text form. This shall also apply if the parties have already exchanged data in an electronic way. Any prior use is not admitted.
6. Contractual Partner and Principal in the terms of these Terms and Conditions is he who commissions DIZ to render its services, in particular to licence the use of its material. If Principal uses the material not for his own medium but for a third party's medium, e.g. one of his customers, Principal shall irrespective of such use be DIZ's contractual partner and be liable for complying with all duties resulting from the contract with DIZ. This shall also apply if DIZ on Principal's request issues the invoices directly to the third party, e.g. Principal's customer.
7. Material shall mean photographs.
8. Any objections regarding the content of the shipment have to be communicated without undue delay after receipt.

### B Fees

1. **Any use of DIZ's material is subject to fee.** This also applies if DIZ's material is used as a working model, for layout purposes or customer presentations.
2. **Fees have to be agreed before using the material.** They depend on the medium, the way and extent of the use, which have to be communicated to DIZ.
3. Any information regarding fees, fee agreements and claims for fees are always to be understood as net.
4. Fees cover the use for the specified purpose and the specified extent, which result from the confirmation of order respectively the confirmation of licence. Each further use is subject to DIZ's prior consent and subject to an additional fee.
5. If DIZ's material is used or transferred without authorization a minimum fee of € 2.500,00 becomes due. Any claims for further damages shall remain unaffected.
6. Exclusive rights or retention periods have to be agreed separately and are subject to an additional fee.
7. Until payment in full Principal shall without DIZ's prior consent in text form not be permitted to reproduce or otherwise use the material. Any such use constitutes a breach of DIZ's and its licensor's property rights and constitutes a breach of contract which entitles DIZ to withdraw the right of use, to cancel the contract and to claim damages from Principal.

### C Costs

1. Handling charges and delivery and transmission costs, which depend on the nature and extent of the generated expenses, will be charged for delivery or transmission of material. By settling such costs Principal does not acquire neither rights of use nor property rights.
2. The applicable handling costs result from the price list in force from time to time, plus delivery and transmission costs.

### D Restraint on disposal

1. Material is provided by DIZ only for the contractually agreed use and has to be returned to DIZ after utilization in the form it has been delivered by DIZ and has to be deleted from Principal's storage media.
2. It is clarified that DIZ does not grant any property rights to Principal.

3. Any adaptation, modification or manipulation of the material protected by copyright, in particular by digital means is prohibited. Exceptions have to be agreed separately.
4. Any promotional use of the material is only admitted as far as such use was explicitly authorised in the confirmation of licence.
5. DIZ does not assume any liability for violations of third party rights such as personal rights, design holder rights, trademark rights and copyrights . In case of violations of such rights only the Principal shall be liable for damages to third parties. Images of public persons may not be used in a way which produces a relationship to a certain product or which alienates the text or the tendency. Film stills or scenes from television programmes must only be used in connection with the coverage of those films and TV programmes. The Principal shall be responsible for obtaining any necessary permission.
6. The transfer of the material or rights of use to third parties must be agreed separately in text form.
7. The use of the material in social networks (such as Facebook etc.) has to be agreed separately. The use in social media offers is only permitted if thereby no transfer of content rights is made to the operator of the offer or to other third parties.
8. The material must not be duplicated, scanned nor used or stored in any other digital way without the payment of a respective licence fee. Furthermore, digital material may only be stored in the course of the production of material within the framework of the granted license. The material may for example not be used simultaneously by several users in the framework of computer networks or a similar computer configuration. If Principal does not require the material any longer, Principal is obligated to immediately delete the material from the computers or the respective electronic storage system.

#### **E Copyright note, file copy**

1. The material must be provided with a copyright note which is undoubtedly assignable to the respective photo. The copyright note must contain the author's name and "Süddeutsche Zeitung Photo".
2. If Principal fails to provide the material with the copyright note, DIZ is entitled to damages in terms of an additional fee of 100% of the respective licence fee. Further, Principal has to indemnify DIZ from any claims of third parties resulting out of the failure to provide the material with the copyright note.
3. **Principal shall provide DIZ with two file copies of any publication in print free of charge and unsolicited.**

#### **F Online Use**

1. Unless otherwise specified in the confirmation of licence a licence for online use permits the Principal only to reproduce the digital material once (i.e. on the website agreed). Any further reproductions require an additional licence and are subject to additional fees.
2. The Principal must assure with respect to digital material which is reproduced in the framework of an agreed online use that the digital material may not be copied, partly or completely removed, adapted, modified or manipulated. **Further, Principal must assure that the metadata (in particular "title", "copyright note" and "legend") are conserved and are not deleted during the online use.**
3. Principal is not admitted to store or integrate digital material in a database or any other storage or information retrieval system, unless this is required for reproducing the material for the agreed online use. In addition, any such storage or integration is only admitted if it is carried out by the Principal or his service provider.

#### **G Warranty, Liability, Prescription**

1. DIZ warrants for the duration of the warranty period commencing upon supply of the material that the material is free of any defects. In case of a defect, such defect will solely be cured by replacing the material or at DIZ's discretion by refunding the licence fee.
2. **Beyond that DIZ does not assume any explicit or implicit guaranty with respect to the quality, marketability or adequacy of the material for a certain purpose.**
3. DIZ shall be liable without limitation for damages, which result from DIZ's intention or gross negligence. Further, DIZ shall be liable for damages resulting from a slightly negligent breach of material duties. Mate-

rial duties mean obligations whose fulfilment facilitate the execution of the contract and upon which Principal regularly relied and was allowed to rely. **In this case DIZ's liability shall be limited to the contractually foreseeable and contract-typical damages, which per calendar year generally is limited to the price of the order.** DIZ shall not be liable for the slightly negligent breach of other duties. The limitation of liability shall not apply to damages caused by injury of life, body or health, by the failure to comply with guaranties, by defects DIZ has maliciously concealed and to DIZ's liability under the Product Liability Act. The exclusions or limitations of liability also apply to claims against DIZ's employees, representatives or vicarious agents.

4. Any claims for damages prescribe within six (6) months after delivery or transmission of the data. This shall not apply to claims for tort or for claims resulting from DIZ's bad faith.

5. With regard to the offered material there are no valid model releases or other approvals, unless the existence of such releases or approvals is confirmed by DIZ in text form. On request Principal is provided with a copy of an existing model release. By providing such a model release DIZ does not assume any guaranty in respect to the validity of the model release. Therefore Principal will indemnify DIZ from any third party claims resulting from the use of the material, if DIZ has not explicitly confirmed the existence or validity of such model release. DIZ does not assume any assurance or guaranty with regard to the use of names, trademarks or registered designs respectively designs or works of art protected by copyright which may be shown on the material. Principal is obligated to clear any rights or permissions which may be necessary for the reproduction have in fact been granted. If DIZ has by mistake confirmed in text form the existence of a release or permission with regard to the material, DIZ's liability shall be limited to the amount invoiced and paid by Principal for the use of the material.

## **H Terms of payment, Final Provisions**

1. DIZ's Invoices are always net plus Value Added Tax at the statutory rate, if applicable. Invoices are payable without discount within two weeks after issuance of the invoice.

2. The parties are aware that national tax law may oblige Principal to pay withholding tax, if Principal is a foreigner. The parties agree that a possible withholding tax shall be borne by Principal. DIZ shall in any case be entitled to the agreed fees in full.

3. In case of default of payment DIZ shall be entitled to charge interest for default in the amount of 4% above the applicable central rate of the European Central Bank, at least, however, € 10,00.

4. Place of performance shall be Munich. Exclusive place of jurisdiction for all legal disputes arising from and in connection with this contract, irrespective of the legal basis, shall be Munich, if both parties are traders.

5. Also transboundary orders shall be governed by the laws of the Federal Republic of Germany in exclusion of the United Nations Convention for the International Sale of Goods (CISG).

6. Should any provision of these Terms and Conditions be or become void or invalid, this shall not affect the validity of the remaining provisions. Instead of the void or invalid provision/s a provision shall apply which Principal and DIZ would have agreed on according to the original purpose of the contestable or invalid provision(s) in order to achieve the same economic success. This shall also apply in the case of a gap in the contract. Changes and amendments to the provisions of these Terms and Conditions including this provision require written form to be valid and a contractual agreement. Oral or textually transmitted side agreements shall only be valid after DIZ's confirmation in text form.

7. Personal data which DIZ or its subcontractor collect in the framework of the registration and the execution of the digital services will not be transferred to third parties and will only be used to perform and carry out the contract. Beyond that, personal data will only be used with Principal's consent or if such use is regulated or admitted by law. Principal's personal data are used by DIZ only in accordance with the privacy statement, which is made available at the following internet address: <http://www.sz-archiv.de/diz-muenchen/datenschutz>.

8. DIZ is neither willing nor obliged to participate in an alternative dispute resolution procedure in front of a consumer dispute regulation body unless there is a legal obligation to participate.

9. The European Commission has established an official online dispute resolution website. This can be found under <https://ec.europa.eu/consumers/odr/> . Consumers can use this platform to resolve their disputes.

20. January 2017