

# General Terms and Conditions (GTC) for Service Providers



Effective as of: October 2019

## 1 Scope

The present General Terms and Conditions (hereinafter "GTC") govern the cooperation between:

- BSF Swissphoto AG, Regensdorf, Switzerland;
  - BSF Swissphoto GmbH, Schönefeld, Germany; and
  - BSF Swissphoto Pasewalk GmbH, Pasewalk, Germany;
- (hereinafter each "BSF Swissphoto") on the one hand, and their suppliers and service providers (hereinafter together "**Service Providers**") on the other hand.

The present GTC shall apply to any and all purchases made and services commissioned by BSF Swissphoto, in particular related to hardware supply, software development, processing of geodata, surveying, aerial data acquisitions, etc., with the exclusion of the GTC of the Service Providers. The present GTC constitute an integral part of the oral or written contracts concluded with the Service Providers (including quotes/order confirmations or email correspondence). In the event of contradictions between the provisions of the individually concluded contracts and the provisions of the present GTC, the former shall prevail.

## 2 Compensation

### 2.1 Principle

The contractual compensation, generally stipulating a lump sum or a cost cap, shall apply.

### 2.2 Gross price

Unless explicitly agreed otherwise, the contractual compensation constitutes a gross price and includes any and all expenses, value-added tax and/or sales tax as well as any other charges and fees.

### 2.3 Compensation for additional services

As a general rule, the Service Providers are not entitled to any additional compensation even if they incurred higher expenses than originally calculated. The Service Providers are only entitled to such additional compensation to the extent that BSF Swissphoto agrees with it in writing or via email.

### 2.4 Payment term

Unless a different payment term is explicitly agreed upon, the Service Providers shall issue their respective invoice after service provision. Such invoice is due within 30 days after receipt of the invoice.

## 3 Deadlines and due dates of the Service Providers

The Service Providers shall fulfill their contractual obligations within the contractual deadline or on the contractual due date. If no deadlines or due dates are agreed upon, BSF Swissphoto may request immediate contractual performance.

If a Service Provider does not adhere to a deadline or a due date, BSF Swissphoto may choose either to withdraw from the respective contract immediately or to set a grace period for the contractual service provision of the Service Provider and, in the event of non-compliance with such grace period, to withdraw from the respective contract. In the event of a withdrawal, BSF Swissphoto shall be held to pay a compensation to the respective Service Provider only to the extent that the services provided up to the date of withdrawal are of economic value to BSF Swissphoto. Para. 6 of the present GTC shall remain reserved.

## 4 Involvement of third parties

The Service Providers may only involve third parties to fulfill their contractual obligations if BSF Swissphoto authorizes such involvement in advance in writing or via email. The involvement of employees of the Service Providers shall remain reserved.

## 5 Compliance with national and international provisions

Whenever the Service Providers conclude and/or fulfill contracts, they warrant that they comply with any and all applicable national and international provisions (in particular related to labor law, environmental law, tax law, commercial embargoes, etc.). If BSF Swissphoto or any of its bodies were held liable by any third party for any such violation, the Service Providers undertake to fully and entirely indemnify BSF Swissphoto and any of its bodies.

## 6 BSF Swissphoto's claims for defects

### 6.1 Warranty obligations

The Service Providers warrant to provide faultless services and/or to supply faultless goods.

### 6.2 Inspection and notice of defects

BSF Swissphoto shall inspect the services provided and/or the goods delivered and shall notify the respective Service Provider of any evident defects within 30 days after delivery and any hidden defects within 30 days after their detection at the latest.

### 6.3 Rework, price reduction, and withdrawal

BSF Swissphoto is entitled to request rework or a price reduction if defects were notified in due time. If rework fails or if the services provided or the goods delivered were severely defective from the very outset to the extent that such services or goods are unusable or useless to BSF Swissphoto, BSF Swissphoto may withdraw from the contract without having to pay any compensation.

BSF Swissphoto's claims for defects shall lapse and expire 24 months after fulfillment of the contractual obligations.

## 7 Damages

If the Service Providers do not comply with a deadline or a due date, if their services or goods are defective, or if they breach their contractual obligations in any other way, they shall be held liable for any damage incurred to BSF Swissphoto unless they can prove that they and/or any rightfully involved auxiliary persons are not at fault.

## 8 Rights related to contractual performance

In connection with their contractual performance, the Service Providers shall transfer any and all intellectual property rights, in particular copyrights related to software and aerial photographs as well as any other rights related to the work results, fully and entirely to BSF Swissphoto.

The Service Providers are obliged to make all necessary provision to ensure that the aforementioned rights, in particular also the rights related to any involved auxiliary persons (incl. employees and third parties), are fully and entirely assigned and transferred to BSF Swissphoto. The Service Providers shall ensure that auxiliary persons confirm the transfer of rights to the respective Service Provider in writing to BSF Swissphoto upon first request.

If software development constitutes the service provided, the source code shall be disclosed to BSF Swissphoto.

The Service Providers warrant that their services are provided without violating any intellectual property rights of third parties. If BSF Swissphoto or any of its bodies are held liable by any third party for any such violation, the respective Service Provider undertakes to fully and entirely indemnify BSF Swissphoto and any of its bodies.

**9 Confidentiality and data protection**

9.1 Confidentiality

The Parties undertake to ensure confidentiality about any and all learnings and documents pertaining to the business secrets of the other Party. This includes, in particular, any and all documents referred to as "internal" or "confidential". In case of doubt, the Parties undertake to consult each other.

9.2 Advertising measures

The Service Providers may list BSF Swissphoto as their customer in their list of references or refer to BSF Swissphoto in other advertising terms only upon prior written consent (email is sufficient).

9.3 Protection of personal data

BSF Swissphoto processes personal data according to its data protection declaration.

Each Party is responsible to comply with the applicable data protection laws. If a Service Provider processes personal data on behalf of BSF Swissphoto as a data processor, the respective data processing contract shall additionally apply.

**10 Amicable settlement**

In case of dispute or disagreement, the Parties undertake to attempt to reach an amicable settlement before they appeal to a judge.

**11 Place of jurisdiction and applicable law**

The Parties agree on the following exclusive places of jurisdiction and the following applicable laws, depending on the contractual party on the part of BSF Swissphoto:

- a) BSF Swissphoto AG, Regensdorf, Switzerland: Place of jurisdiction shall be Regensdorf; Swiss law shall apply, with the exclusion of the UN Convention on Contracts for the International Sale of Goods, CISG.
- b) BSF Swissphoto GmbH, Schönefeld, Germany: Place of Jurisdiction shall be Potsdam; German law shall apply, with the exclusion of the UN Convention on Contracts for the International Sale of Goods, CISG.
- c) BSF Swissphoto Pasewalk GmbH, Pasewalk, Germany: Place of jurisdiction shall be Neubrandenburg; German law shall apply, with the exclusion of the UN Convention on Contracts for the International Sale of Goods, CISG.

Furthermore, BSF Swissphoto has the right to bring an action against Service Providers at their respective place of residence or registered office. With regard to applicable law, the paragraph above shall remain valid unchanged.

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