

# General Terms and Conditions (GTC) for Customers



Effective as of: October 2019

## 1 Scope

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

- a) BSF Swissphoto AG, Regensdorf, Switzerland;
  - b) BSF Swissphoto GmbH, Schönefeld, Germany; and
  - c) BSF Swissphoto Pasewalk GmbH, Pasewalk, Germany;
- (hereinafter each "BSF Swissphoto") on the one hand, and their **Customers** on the other hand.

The present GTC shall apply to any and all purchases made and services provided by BSF Swissphoto, in particular related to the business fields of 3D Mapping, Engineering Surveying, and Consulting. The present GTC constitute an integral part of the oral or written contracts concluded with the Customers (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 Obligations of the Customers

The Customers provide to BSF Swissphoto in due time and in good order and condition any and all information, documents and/or data carriers necessary to provide the contractual service. If any information, documents and/or data carriers provided by Customers are defective, BSF Swissphoto may invoice any additionally incurred costs separately at the hourly rates applicable at the time of service provision.

## 3 Involvement of third parties

BSF Swissphoto may involve third parties in order to fulfill its contractual obligations. However, solely BSF Swissphoto shall remain entitled and obliged under the contracts with the Customers.

## 4 Compensation

### 4.1 Principle

The contractual compensation shall apply. Any and all prices are understood to exclude any kind of deduction. Any expenses, fees and taxes (in particular value-added tax), shall be separately accounted for and additionally invoiced.

### 4.2 Missing price agreement

If an explicit price agreement is missing – e.g. with regard to a subsequent contractual extension of services – BSF Swissphoto shall invoice its services on the basis of the hourly rates applicable at the time of service provision to the extent necessary to duly fulfill its contractual obligations.

### 4.3 Payment term

Invoices issued by BSF Swissphoto are due within 30 days as of the date of invoice. After that, Customers are considered to be in arrears with payments and owe an interest on arrears of 5% per year.

### 4.4 Offsetting

Customers may offset their own receivables due from BSF Swissphoto against BSF Swissphoto's receivables due from the Customers only to the extent that the former are undisputed or have been legally recognized.

### 4.5 Price adjustments

BSF Swissphoto reserves the right to adjust prices if between the time of the contract conclusion and the contractual fulfillment the costs significantly change for reasons for which BSF Swissphoto cannot be held responsible. This particularly applies if the point in time of the contractual fulfillment is postponed subsequently and for reasons for which BSF Swissphoto cannot be held responsible.

## 5 Customers' claims for defects

### 5.1 Warranty obligations

BSF Swissphoto undertakes to provide the services agreed upon in a diligent, timely and complete manner. With regard to defects notified in due time, BSF Swissphoto is liable to Customers for 12 months (limitation period) as of provision of the contractual services.

### 5.2 Inspection and notice of defects

The Customers shall inspect the services provided and/or the goods delivered and shall notify BSF Swissphoto in writing of any evident defects within 30 days after delivery and any hidden defects within 30 days after their detection at the latest. If defects are not notified in due time, any claims for defects are forfeited.

### 5.3 Rework, price reduction, and withdrawal

BSF Swissphoto is entitled to rework defects that were notified in due time. If BSF Swissphoto waives to perform a rework or if rework fails, Customers are entitled to an adequate price reduction or, in the event of significant defects which render the service unusable or useless to a Customer, to withdraw from the contract.

## 6 Limitation of liability

### 6.1 Impossibility of performance

BSF Swissphoto shall not be held liable if BSF Swissphoto or any of the involved third parties are temporarily or permanently inhibited from fulfilling the contract for reasons that are outside BSF Swissphoto's area of influence and/or the area of influence of any third parties such as acts of public authorities, acts of war, strikes, acts of God (in particular adverse flying weather), etc. In the event of permanent impossibility, the respective Customer shall compensate BSF Swissphoto for the services provided up to the time of impossibility of performance.

### 6.2 Breach of contract

To the extent that BSF Swissphoto acts through its bodies, BSF Swissphoto shall only be held liable for intentional or grossly negligent breaches of duty. To the extent that BSF Swissphoto acts through auxiliary persons (employees, involved third parties), BSF Swissphoto shall only be held liable for intentional breaches of duty.

### 6.3 Scope of limitation of liability

The present limitations of liability shall apply to any and all contractual and extra-contractual claims between Customers on the one hand and one of the companies of BSF Swissphoto and any of its involved bodies and auxiliary persons on the other hand.

## 7 Termination of contract

### 7.1 Termination by Customers

If Customers terminate a contract, they shall pay the full and entire contractual compensation to BSF Swissphoto. However, BSF Swissphoto shall deduct from its compensation any expenses that it saves as a result of such contract termination or that it gains or maliciously fails to gain through other use of its labor.

If Customers terminate a contract related to the performance of a continuing obligation, they shall pay the full and entire compensation for any and all services planned until the next ordinary termination date, without any deductions to be made on the part of BSF Swissphoto.

### 7.2 Termination by BSF Swissphoto

If Customers do not meet their obligations (e.g. related to the supply of documents or the payment of services) despite a reminder that specifies a grace period, BSF Swissphoto is

entitled to withdraw from the contract. The Customers are obliged to compensate any and all services provided up to that point in time. Moreover, the Customers shall fully and entirely compensate any further damage incurred by BSF Swissphoto due to the contract termination induced by the Customer.

**8 Rights related to the services provided**

**8.1** Right of use of the Customers related to the services provided

Customers have the right to use and, in particular, to reproduce for internal use, without any limitation in time or place and in accordance with the contractual purpose, the services provided, i.e. in particular the processed geometric and photographic data, maps and other documents. Unless explicitly agreed otherwise, the services provided must not be shared with any third parties. This applies irrespective of the fact whether or not such services are protected by intellectual property rights, i.e. in particular by copyright. To the extent that it is permitted to share photographs supplied by BSF Swissphoto with third parties or to publish such photographs, they shall be furnished with the copyright sign „© BSF Swissphoto“.

**8.2** Revocation of right of use

If Customers do not pay a compensation due despite a reminder, BSF Swissphoto has the right to revoke the right of use mentioned above in para. 8.1. This applies irrespective of the fact whether or not such services are protected by intellectual property rights, i.e. in particular by copyright. After full payment of the compensation, revocation of the right of use remains excluded.

**8.3** Rights of BSF Swissphoto

BSF Swissphoto shall retain the rights to the contractual services to which BSF Swissphoto grants the Customers a right of use. This includes the right to the original working documents (incl. aerial photographs) as well as the right to use the services, without any limitation in time or place, for itself or any other Customer.

The data processing knowhow as well as the respective methodology and models shall, irrespective of their legal protectability, exclusively belong to BSF Swissphoto.

**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

Unless explicitly agreed otherwise upon conclusion of the contract, BSF Swissphoto is entitled to list Customers on its list of references and to use excerpts of project results as examples whereby confidentiality shall be ensured.

**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 BSF Swissphoto processes personal data on behalf of a Customer as a data processor, the respective data processing contract shall additionally apply.

**10 Storing of data and documents**

After expiry of the limitation period according to para. 5.1 above, BSF Swissphoto is not obliged to store any data or documents supplied. Storage beyond the limitation period shall only take place if it is explicitly stipulated in the contract and compensated accordingly. In such event, only the supplied final results and no interim results shall be stored. Customers may have copies of available documents and data made during the storage period and against reimbursement of any expenses incurred.

**11 Amicable settlement**

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

**12 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 Customers 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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