

## General Terms and Conditions (GTC) of FotoFinder Systems GmbH

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### 1. Definitions

**DATA BACKUP, PROPER**

Data backup includes all technical and/or organizational measures to ensure the availability, integrity and consistency of the systems, including the data, programs and procedures stored on these systems and used for processing purposes. PROPER DATA BACKUP means that the measures taken allow for immediate or short-term restoration of the state of systems, data, programs or procedures, depending on data sensitivity, after a detected impairment of availability, integrity or consistency due to a damaging event; the measures include at least the production and testing of the reconstructibility of copies of the software, Data and procedures in defined cycles and generations.

**LOSS**

Loss (deletion) or loss of integrity and consistency of data.

**FOTOFINDER**

FotoFinder Systems GmbH, legally represented by the managing directors Andreas Mayer and Julian Mayer, Industriestraße 12, 84364 Bad Birnbach, Germany

**CUSTOMER**

Natural or legal person who: PRODUCTS at FOTOFINDER or orders services.

**RIGHTS OF USE**

IP-Rights that FOTOFINDER the CUSTOMERS admits.

**PARTIES**

FOTOFINDER and the CUSTOMER.

**PRODUCTS**

The information provided in the written order confirmation of FOTOFINDER Listed HARDWARE and SOFTWARE, plus other services, if applicable.

**DAMAGE FUNCTION**

A user-unwanted feature that may inadvertently or intentionally jeopardize the availability of data, resources, or services, the confidentiality of data, or the integrity of data.

**IP RIGHTS**

Industrial property rights (e.g. trademark or patent rights) or copyrights.

**STANDARD SOFTWARE**

Software (programs, program modules, tools, etc.) that has been developed for the needs of a majority of customers on the market and not specifically by FotoFinder for the customer, including the associated documentation.

**CONFIDENTIAL INFORMATION**

Means any information, whether written, electronic, oral or otherwise, that a PARTY DISCLOSES to the receiving PARTY or its representative when it:

are clearly marked as confidential, described as such, or otherwise identified as such;

- constitute a trade secret within the meaning of Section 2 No. 1 of the Trade Secrets Act;
- are protected by industrial or other property rights (e.g. copyrights),
- are to be regarded as confidential by reason of their content and/or circumstances;
- are covered by data protection or a similar duty of confidentiality, or

disclosed CONFIDENTIAL INFORMATION .

CONTRACT	Entirety of contractual agreements between FOTOFINDER and the CUSTOMERS including written order confirmation and attachments.
DEFAULT DATE	Each calendar day commenced with which the Licensor is in default after the deadline has been exceeded.

## 2. Offer, Prices, Conclusion of Contract

- 2.1. Offers from FOTOFINDER are subject to change and non-binding. The offer is submitted by the CUSTOMER in the form of an order. Acceptance of this offer takes place with written order confirmation by FOTOFINDER. The contract is concluded upon written confirmation of the order by FOTOFINDER. The written order confirmation alone determines the scope of services. Issuance of an invoice is equivalent to a written order confirmation.
- 2.2. In light of the continuous development of PRODUCTS, FOTOFINDER reserves the right to modify the contractual PRODUCTS at any time, provided that functionality and performance of at least equal value are ensured.

## 3. Scope

- 3.1. FOTOFINDER sells or licenses the standard software AND/OR products to the CUSTOMER under the agreements in the CONTRACT.
- 3.2. The documentation of the STANDARD SOFTWARE and/or the PRODUCTS must be delivered in electronic and printable form, unless otherwise agreed.
- 3.3. The STANDARD SOFTWARE shall be scanned using an up-to-date antivirus program at an appropriate time prior to each delivery to the CUSTOMER. Upon delivery, FOTOFINDER shall declare to the CUSTOMER that the scan did not reveal any indications of harmful functions in the STANDARD SOFTWARE.
- 3.4. The CUSTOMER is responsible FOR PROPER DATA BACKUP.

## 4. Remuneration

- 4.1. The amount of the remuneration, its due date, and invoicing are determined by the provisions of the CONTRACT. The remuneration becomes due only after the CUSTOMER has received an invoice that complies with applicable statutory requirements.
- 4.2. In the case of the subscription of use of the STANDARD SOFTWARE, the remuneration may be increased for the first time only after the expiry of the minimum contract period. Further increases may be requested no earlier than twelve months after the previous increase. Any price increase shall take effect no earlier than one month after the CUSTOMER receives written notification thereof. If the conditions for a price increase are met, and the increase exceeds 10% of the most recently agreed remuneration, the CUSTOMER shall have the right to terminate the CONTRACT, with respect to the affected STANDARD SOFTWARE, effective no earlier than the date on which the new prices come into effect, within the notification period.

## **5. Delay**

- 5.1. In the event of default, the CUSTOMER may set FOTOFINDER a reasonable deadline for performance. If this deadline expires without performance, the CUSTOMER may withdraw from the contract, in whole or in part, in accordance with statutory provisions. Additionally, the CUSTOMER may claim damages and, in the case of the transfer of use of the STANDARD SOFTWARE, terminate the CONTRACT. However, the rights described in the second sentence are excluded unless FOTOFINDER is responsible for the delay. The CUSTOMER is obligated to declare, at FOTOFINDER's request, whether they wish to withdraw from the contract due to the delay in performance or if they wish to insist on the service. This declaration must be made within the period specified in Section 5.1, sentence 1, and within a reasonable time before the period expires. Until FOTOFINDER receives a response, it remains entitled to perform the service. Sections 5.2 and 5.3 shall remain unaffected.
- 5.2. If the CUSTOMER claims damages and the CONTRACT does not specify an end date for the assignment period in the case of the transfer of use of the STANDARD SOFTWARE, the obligation to pay for the transfer of use shall be limited to twice the monthly remuneration for the affected STANDARD SOFTWARE. If the CONTRACT specifies an end date for the assignment period, the obligation to pay is limited to 8% of the total remuneration for the affected STANDARD SOFTWARE. Any lump-sum damages already paid by the CUSTOMER due to default, in accordance with Clause 5.3, will be credited.
- 5.3. If, in the case of the transfer of STANDARD SOFTWARE, FOTOFINDER is more than seven calendar days late in meeting an agreed transfer date specified in the contract, the CUSTOMER may claim liquidated damages for delay in performance. These damages will amount to 5% of the monthly remuneration for the affected STANDARD SOFTWARE for each additional day of delay. If the contract does not specify an end date for the assignment period, the CUSTOMER's obligation to pay liquidated damages is limited to twice the monthly remuneration for the affected STANDARD SOFTWARE. If the contract specifies an end date for the assignment period, the obligation to pay is limited to 8% of the total remuneration for the affected STANDARD SOFTWARE.  
The CUSTOMER is free to provide evidence that no damage or less damage has occurred.

## **6. Delivery and place of performance**

- 6.1. The place of performance for all contractual claims is Bad Birnbach. All deliveries are made ex works (EXW) in accordance with Incoterms 2020, unless otherwise agreed in writing.
- 6.2. Delivery is made by shipping at the CUSTOMER's request. The costs for delivery shall be borne by the CUSTOMER, unless otherwise agreed in writing.
- 6.3. In the case of delivery by shipment, the risk passes to the CUSTOMER as soon as the shipment has been handed over to the person carrying out the transport or has left FOTOFINDER's warehouse for shipment. This also applies if carriage-free delivery has been agreed. If the shipment is impossible or delayed through no fault of FOTOFINDER or through the fault of the CUSTOMER, the risk shall pass to the customer on the day of readiness for shipment. Insurance against transport or storage damage is only taken out at the express request of the CUSTOMER. The associated costs are borne by the customer.

## **7. Contractual acceptance**

- 7.1. In the case of services provided by FOTOFINDER under a contract for work and services (e.g., setup, installation, and assembly of products), the CUSTOMER must verify the performance results for compliance with the contract after the services have been provided or upon notification of their completion. The CUSTOMER must then either declare acceptance or report any defects found, providing a detailed description of the defects. Minor defects shall not prevent acceptance. The CUSTOMER must declare acceptance within two weeks of the provision of services or, if applicable, within a reasonable time frame based on the specific circumstances. If the CUSTOMER does not raise objections to the identified defects, including a specific description of the defects, within the aforementioned period, the service under the contract for work and services shall be deemed to have been accepted by the CUSTOMER in accordance with the contract. This does not apply if a defect was not identifiable during the inspection..
- 7.2. If, prior to acceptance, the service under the contract for work and services has been lost, deteriorated, or has become impracticable due to an instruction given by the CUSTOMER for its execution, or for other reasons within the CUSTOMER's sphere of responsibility, and without the involvement of any circumstance for which FOTOFINDER is responsible, FOTOFINDER may:
- i. Claim a portion of the remuneration corresponding to the work already performed, and
  - ii. Seek reimbursement for any expenses incurred that are not included in the remuneration.

## **8. Customer cooperation**

- 8.1. As part of its cooperation obligations, the CUSTOMER shall ensure that:
- the PRODUCTS supplied by FotoFinder are capable of being professionally assembled, connected, and set up for contractual use. This includes ensuring that all necessary access points, connections, and cables required for this purpose are available and ready for operation;
  - provide FotoFinder with any information necessary for the provision of the services agreed upon in the contract;
  - FotoFinder is informed of all relevant national laws, regulations, administrative guidelines, and other applicable rules. Additionally, the CUSTOMER is responsible for obtaining any necessary permits from the competent authorities in a timely manner and at their own expense.;
  - that any regulatory requirements imposed on FotoFinder in relation to the products covered by the contract can be fulfilled.

The CUSTOMER undertakes to comply with the legal provisions (e.g. criminal provisions) and the rights of third parties (e.g. IP rights) within the scope of the performance of the contractual relationship.

- 8.2. If the CUSTOMER fails to provide the required cooperation services, provides them late, or provides them improperly, FotoFinder is entitled to charge for any additional expenses incurred in fulfilling the contractually agreed services.

In cases where the lack of cooperation services makes it impossible or significantly more difficult for FotoFinder to provide the agreed services, FotoFinder may set a reasonable grace period for the CUSTOMER to fulfill the relevant cooperation obligations. If this grace period expires without the required cooperation being provided, FotoFinder is entitled to withdraw from the contract.T.

## **9. Commissioning of subcontractors**

FOTOFINDER is entitled to commission subcontractors to provide the contractually agreed services. The selection of the subcontractor is at the sole discretion of FOTOFINDER.

The CUSTOMER may only object to the commissioning of subcontractors if there are justified reasons that oppose the commissioning.

## 10. Retention of title

- 10.1. The goods remain the property of FotoFinder until all obligations arising from this contractual relationship have been fully fulfilled. However, in the case of the transfer of use of STANDARD SOFTWARE, this does not apply to the software component of the products provided. If the CUSTOMER intends to sell the goods prematurely, FotoFinder's prior written consent must always be obtained. If this is not done, the sale is not permitted. Sentences 3 and 4 do not apply if the CUSTOMER is an authorized distributor of FotoFinder products as agreed. The CUSTOMER hereby assigns to FotoFinder any claim arising from the sale of the reserved goods in violation of sentence 4, including all ancillary rights. This assigned claim may not be further assigned by the CUSTOMER to others. Upon FotoFinder's request, the CUSTOMER is obligated to notify the third-party acquirer of the assignment and to provide any necessary information and documents to enforce the rights against the third-party acquirer. FotoFinder is entitled to directly notify the third party of the assignment.
- 10.2. If the Customer's reserved property is combined with other items to form a single item, the Customer hereby transfers proportionate co-ownership of the item to FotoFinder.
- 10.3. If the goods subject to retention of title are moved to a place other than the one on the day of delivery, FOTOFINDER must be informed in text form at least 10 days in advance, stating the new address.

## 11. Withdrawal, termination and insolvency

### 11.1. Withdrawal and termination by FOTOFINDER

In the event that the CUSTOMER is subject to any of the relevant events listed below, and its obligations under the AGREEMENT have not yet been fully performed, FotoFinder may, at its discretion, either:

- Withhold delivery of the PRODUCTS until the CUSTOMER is no longer insolvent due to one of the relevant events described below, or
- Terminate the CONTRACT extraordinarily, depending on the subject of performance.

Relevant events are:

- The Client suspends or threatens to pay payment in accordance with the Contract, or is unable to pay claims when due, or admits that they are unable to pay claims;
- The Customer responsibly and/or repeatedly infringes intellectual property rights or other rights of third parties or FotoFinder;
- The customer does not comply with regulatory requirements insofar as this is of considerable importance for the contractual relationship with FotoFinder;
- The Client enters into negotiations with creditors with a view to debt restructuring or submits a proposal for an arrangement or enters into a corresponding arrangement with its creditors;
- In relation to the Client, an application for an order for liquidation is issued or a corresponding resolution is passed;
- Insolvency proceedings are opened against the customer or an insolvency application is filed;
- An application is filed with a court to appoint an administrator over the client's assets.

If one of the aforementioned cases occurs, FotoFinder will be informed of this immediately by the customer.

### 11.2. Withdrawal and termination by the CUSTOMER

The CUSTOMER shall have the right to withdraw from or terminate the CONTRACT extraordinarily if FotoFinder suspends or threatens to suspend the delivery or installation of the Products due to any of the following events:

- FotoFinder enters into negotiations with the CUSTOMER's creditors to restructure its debts, proposes a creditor agreement, or concludes such an agreement, provided that such agreements could prevent FotoFinder from fulfilling its contractual obligations to the CUSTOMER;
- A liquidation order is issued or a corresponding resolution is passed in relation to FotoFinder;
- Insolvency proceedings are initiated or an insolvency petition is filed against FotoFinder;

- A court application is made for the appointment of an administrator over FotoFinder's assets.

Clause 5 shall apply accordingly.

#### 11.3. Written form clause

The declaration of withdrawal or termination must be made in writing, unless the PARTIES agree in writing on less stringent formal requirements.

#### 11.4. Obligation to surrender

In the event of withdrawal, FotoFinder shall be obliged to return any payments made by the CUSTOMER. The CUSTOMER, in turn, shall return any services provided by FotoFinder, as well as any benefits derived from such services. This does not apply to commissioning services or other support services in the event of termination of the CONTRACT or the components of the contract.

If restitution or surrender is not possible due to the nature of the items (for example, if the PRODUCTS have been consumed, sold, encumbered, processed, or redesigned), or if the item has deteriorated or perished, the CUSTOMER must provide compensation. This does not apply if the deterioration was solely due to the intended use of the item.

## 12. Intellectual property

### 12.1. If a third party asserts claims against the CUSTOMER due to the infringement of intellectual property rights by the STANDARD SOFTWARE supplied by FotoFinder, and the use of the STANDARD SOFTWARE is impaired or prohibited as a result, FotoFinder's liability will be as follows:

FotoFinder shall, at its discretion and expense, either:

- Modify or replace the STANDARD SOFTWARE in a manner that avoids infringing the intellectual property rights while maintaining the essential agreed-upon functionalities and performance features in a reasonable manner for the CUSTOMER; or
- Exempt the CUSTOMER from license fees for the use of the STANDARD SOFTWARE in relation to the intellectual property rights holder or third parties. In the case of the transfer of use, this exemption applies only during the agreed contract period.

If FotoFinder is unable to achieve this under reasonable conditions, the CUSTOMER will be notified, and the use of the software will be prohibited from a certain point in time. The CUSTOMER is obligated, at FotoFinder's option, to either delete the STANDARD SOFTWARE, including documentation and all copies, or return it to FotoFinder. In the case of a transfer of use, the CUSTOMER's entitlement to remuneration applies only for the period during which the STANDARD SOFTWARE could be used.

### 12.2. For FotoFinder's liability under Section 12.1 to apply, the CUSTOMER must:

- Immediately notify FotoFinder of any third-party claims.
- Not acknowledge the alleged infringement of intellectual property rights.
- Either leave any dispute, including out-of-court settlements, to FotoFinder or only handle it in agreement with FotoFinder.
- FotoFinder shall bear the necessary court and legal costs incurred by the CUSTOMER in defending against such claims.

If the CUSTOMER discontinues use of the STANDARD SOFTWARE for damage mitigation or other important reasons, the CUSTOMER is obligated to inform the third party that the cessation of use does not imply an acknowledgment of the alleged infringement of intellectual property rights..

### 12.3. If the infringement of intellectual property rights is caused by the CUSTOMER, no claims against FotoFinder will be accepted.

### 12.4. Further claims by the CUSTOMER due to an infringement of third-party intellectual property rights are excluded. This exclusion does not apply in cases of intent, gross negligence, or injury to life, limb, or health.

### 13. Warranty

- 13.1. A product that is already defective at the time of handover (warranty claim) will be replaced by FOTOFINDER with an equivalent PRODUCT or professionally repaired AT FotoFinder's expense.
- 13.2. The warranty period for new items is 12 months for customers who are considered entrepreneurs and begins on the date of delivery or handover.
- 13.3. Used items are excluded from the warranty.
- 13.4. If the type of subsequent performance (replacement of the product or repair) requested by the CUSTOMER requires an effort that, considering the product price, the terms of the contract, and the principles of good faith, is grossly disproportionate to the CUSTOMER's interest in performance—taking into account factors such as the value of the product in defect-free condition, the significance of the defect, and whether the alternative type of supplementary performance can be used without significant disadvantages for the CUSTOMER—then the CUSTOMER's claim shall be limited to the other type of supplementary performance. The place of performance for subsequent performance is Bad Birnbach. However, FotoFinder is also free to carry out the subsequent performance at the CUSTOMER's site.
- 13.5. The CLIENT may withdraw from the CONTRACT or demand a reduction of the price (reduction) if the second repair fails or FOTOFINDER refuses to repair the repair or fails to do so within a reasonable period of time.
- 13.6. If operating instructions are not followed, changes are made to the PRODUCTS , parts are replaced or consumables are used that do not meet the specified specifications, any warranty will be void.
- 13.7. In particular, material defects do not include defects that are attributable to faulty or improper installation and commissioning by the CUSTOMER or a third party commissioned by the customer. Modifications or extensions of the purchased item by the CUSTOMER after handover, in particular the installation of additional software, are solely the responsibility of the CUSTOMER. Resulting defects or malfunctions do not give rise to any warranty claims against FOTOFINDER.
- 13.8. The CUSTOMER must notify FOTOFINDER IN WRITING of obvious defects immediately, but no later than within two weeks of receipt of the delivery item, otherwise the goods are considered approved. Defects that cannot be discovered within this period after careful examination must be reported in writing immediately after discovery.
- 13.9. In the event of an unjustified assertion of warranty claims, the customer is obliged to reimburse FotoFinder for the costs incurred in this context on the basis of the applicable price list.
- 13.10. In the event of repair or replacement of the product, the CUSTOMER is obligated to return the product to FOTOFINDER at the return address provided by FOTOFINDER, clearly stating the order number (RMA). Before sending the product, the CUSTOMER must remove any items (e.g., chips or cards) inserted into the product. FOTOFINDER is not responsible for inspecting the product for such items. FOTOFINDER will not be liable for any loss of these items, unless it was readily apparent to FOTOFINDER at the time of return that such items were inserted. In that case, FOTOFINDER will notify the CUSTOMER and hold the item available for pickup; the CUSTOMER will bear any associated costs. Additionally, prior to sending a product for repair or replacement, the CUSTOMER must, if applicable, create separate backup copies of the system software, applications, and all data on a separate storage medium and deactivate all passwords. FOTOFINDER assumes no liability for data loss. Furthermore, after receiving the repaired or replacement product, the CUSTOMER is responsible for reinstalling the software, restoring the data, and reactivating any passwords. FOTOFINDER is not liable for any costs associated with the reinstallation of software or hardware installed after the original purchase of the product from FOTOFINDER.
- 13.11. In the event of defect rectification/replacement delivery, FOTOFINDER acquires ownership of the removed/replaced components/devices with the removal/replacement. As part of production as well as for the elimination of defects/replacements, FOTOFINDER uses spare parts or components that are new or as good as new in accordance with the usual industry standard.
- 13.12. Warranty claims against FOTOFINDER are only available to the direct CUSTOMER and are not assignable.
- 13.13. The manufacturer's warranty (e.g. for monitor, printer, etc.) is a warranty of the respective manufacturer and does not constitute a warranty by FOTOFINDER .

## **14. Liability**

14.1. FOTOFINDER is liable for damages for which it is responsible as follows:

- for property damage up to EUR 50,000.00 per damage event, but not in total in excess of the agreed total contract value (TCV);
- for financial losses up to the amount of the remuneration for three months for the STANDARD SOFTWARE. Liability for financial losses is limited to the agreed total contract value (TCV).

14.2. The limitations of liability in accordance with Section 14.1 do not apply in the event of intent, gross negligence, lack of a warranted characteristic, injury to life, limb, health or insofar as the Product Liability Act applies.

14.3. In the event of loss of data, FotoFinder shall only be liable for the effort required to restore the data if the data is properly backed up by the customer. In the event of slight negligence on the part of FotoFinder, this liability only applies if the customer has carried out a proper data backup immediately before the measure leading to the loss of data.

## **15. Software, data and data backup**

15.1. For software developed by FOTOFINDER, FotoFinder's Software License Terms (EULA) in their current version supplement these Terms and Conditions.

15.2. For software supplied by FOTOFINDER that is not manufactured by FOTOFINDER, the license terms of the respective software manufacturer apply. FotoFinder attaches required licenses to the products. Software from Microsoft Corporation is supplied as an OEM version.

15.3. The CUSTOMER remains the sole owner of the data processed by him via the STANDARD SOFTWARE.

15.4. The CUSTOMER is responsible for maintaining and regularly backing up its individual data, including configurations, settings, and user management information.

15.5. The CUSTOMER is informed that he is responsible for the data backup strategy, in particular for the regular execution of data backups including the backup logic, the verification of the data backup for completeness and correctness as well as for ensuring the recoverability of the data from the data backup. The customer is responsible for any damage caused to the CUSTOMER or third parties as a result of a defective or omitted or non-reconstructible data backup.

## **16. Privacy**

16.1. The customer's data is subject to electronic data processing. FotoFinder will comply with the relevant data protection regulations when using personal data.

16.2. Customers can contact FotoFinder's data protection officer at any time regarding data protection issues. FotoFinder ensures that all persons entrusted by it with the processing or performance of the contract comply with the legal provisions on data protection. The obligation to maintain data secrecy required by data protection law must be made at the latest before the first commencement of activity and must be proven to the customer upon request.

## **17. Secrecy**

17.1. Confidential information may only be used for the purpose of performing the contract. The parties undertake to keep confidential information strictly confidential and to take all necessary measures to prevent confidential information from becoming accessible to unauthorized third parties. The parties undertake to make the confidential information accessible only to those third parties who need to know such information (employees, subcontractors).

17.2. In addition, the PARTIES agree to maintain confidentiality regarding the content of the contractual provisions and the knowledge gained during their execution.

17.3. The confidentiality obligation also applies to the initiation of a contractual relationship as well as beyond the termination of the contractual relationship. A corresponding duty of secrecy must be imposed on the assistants involved.

## **18. Force majeure**

FOTOFINDER does not have to deliver if there are cases of force majeure or if the manufacturer has stopped producing the ordered goods and does not supply FOTOFINDER even though it has concluded a specific

cover transaction. FotoFinder must inform the customer immediately of these circumstances and immediately refund any consideration already received.

**19. Place of jurisdiction and amendments to the contract**

- 19.1. The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The exclusive place of jurisdiction is Passau.
- 19.2. If one provision in these Terms and Conditions or a provision within the framework of other agreements is or becomes invalid, the validity of the remaining provisions shall not be affected. Section 139 of the Civil Code (BGB) does not apply in this respect.
- 19.3. Additional or deviating agreements must be made in writing and only then become part of the contract. This also applies to the amendment of the written form requirement.
- 19.4. General terms and conditions of business or purchase of the customer do not become part of the contract.