

General Terms and Conditions of Business and Use (GTC)

Download our General Terms and Conditions of Business and Use here.

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Would you like to use the services of smartphoto™? Please read the following general terms and conditions carefully.

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Introduction

smartphoto™ is the new brand of the company smartphoto since July 2011. In the following, smartphoto™ stands for the company smartphoto AG, CH-4133 Pratteln, VAT ID no. CHE - 100.365.169 (hereinafter referred to as "smartphoto™", "us" or "we"), which operates a platform on the Internet under the URL <http://www.smartphoto.ch> with an associated web store for uploading digital images to obtain photo products and other personalized products as well as for the use of other services. This platform can be used by customers. Use is reserved for persons aged 18 and over with a valid delivery address who register with a valid e-mail address registered in their name.

There are no national and/or regional restrictions with regard to the use of the offers (delivery within Europe). Otherwise, use is only permitted under the strict conditions of Swiss data protection laws. Any improper use or exploitation of the smartphoto™ website is prohibited. No guarantee is given for the availability of the website or for the accuracy and completeness of the content/entries. The following terms and conditions of sale apply to all legal transactions between smartphoto™ and the customer. These are accepted by using an offer or service from or by clicking to confirm the order with smartphoto™. The GTC can be accessed online at any time.

Please note that any breach of this Agreement may result in termination of our service, subject to any other rights smartphoto™ may have as a result of such breach. smartphoto™ reserves the right to modify

this Agreement. For general information, you can always send an e-mail to the following address: service.en@smartphoto.ch.

More about your uploaded photos

When you create an account, smartphoto™ offers you free temporary storage space on the website for your uploaded digital images. Image storage is a service that facilitates the creation of your products and is not an archiving system for your digital files. smartphoto™ is not responsible for the loss of previously transferred images: Always keep the original files and take the necessary steps to save personal copies of your digital images. smartphoto™ also reserves the right to delete images from accounts. smartphoto™ will then inform the customer by e-mail using the last used connection data. However, no rights can be derived from this e-mail or the non-receipt of the e-mail. The decision of smartphoto™ to restrict or delete the image storage is irrevocable.

Minimum resolution

You know that printing a digital image on a medium requires a minimum resolution in pixels. The smartphoto™ editor will inform you if your image does not have the minimum resolution required for high-quality printing. If the minimum resolution is not reached, you can still use your photos, but accept the risk of lower quality. smartphoto™ accepts no responsibility if you use a photo with insufficient resolution despite the warning. If an image is used whose quality (in pixels, color or sharpness) is not sufficient to allow a high quality print, no refund of your order will be possible.

Use of data carriers

If we receive USB sticks, CDs, memory cards or other data carriers for the development of smartphoto™ products, these will be returned to the buyer's specified address, provided they are clearly marked with name and address. If this is not the case, they will be stored for a period of three months before being destroyed. smartphoto™ accepts no liability for loss or damage to data carriers.

Conclusion of contract

smartphoto™ offers you the opportunity to upload your own digital images to one or more online photo albums ("upload") in order to order individual products from the photos, such as paper prints of the images or other personalized products. You therefore have the option of selecting and ordering the desired items (shopping cart) on the smartphoto™ website. Once the customer has seen the product(s) and their characteristics, he/she is solely responsible for selecting the product(s) that he/she wishes to order. The customer alone knows the desired use of the products ordered and is solely in a position to assess whether these products are compatible with the products he already uses. These choices concern in particular the format chosen for the prints and the cropping and/or white border options proposed on the Website. It is the sole responsibility of the customer to seek advice from smartphoto™ or other competent persons if they do not consider themselves sufficiently informed on the subject. The range of goods offered by smartphoto™ may vary, there is no legal claim to constant availability and delivery of the respective articles.

All offers from smartphoto™ are subject to change. All prices are quoted in Swiss francs including all applicable taxes. They do not include shipping costs, which are charged additionally depending on the products ordered and are listed separately on the [online price list](#) (the shipping costs are a flat rate and are only added up between the different shipping categories of products ordered). The customer will be informed of these shipping costs before confirming the binding order in the shopping cart. The presentation of the products in the online store does not constitute a legally binding offer, but a non-binding online catalog. By clicking on the button "order with obligation to pay" or "buy", the customer places a binding order for the goods contained in the shopping cart. Confirmation of receipt of the order is sent together with acceptance of the order immediately after sending an e-mail for invoicing.

Confirmation of receipt of the order does not constitute acceptance of the contract. We can accept your order by sending an e-mail within two days or by delivering the ordered products.

smartphoto™ recommends its customers to keep this information on a paper document or in electronic form. All goods remain the property of smartphoto™ until the purchase price and all claims associated

with the purchase have been paid in full. smartphoto™ is entitled to refuse orders from customers/users without giving reasons.

In the case of deliveries abroad, the customer is obliged to obtain any necessary registrations and permits in good time at his own expense and to pay any customs duties due. The customer shall be responsible for any delays and damages resulting from failure to fulfill this obligation.

Right of withdrawal

Due to the highly personalized nature of the products ordered from smartphoto™, smartphoto™ only offers its customers a limited withdrawal clause.

Excluded from the right of withdrawal are:

1. Products that have been personalized at your request
2. Sealed products that cannot be returned for health or hygiene reasons and that have been unsealed after delivery (e.g. food, drinks, perfume, soap, bath salts, candles, etc.).

Please send us your revocation in writing by e-mail to: service.en@smartphoto.ch within 14 days of receipt of the goods. The time of dispatch of the revocation is decisive for compliance with the deadline. The exercise of the right of withdrawal does not require any justification. The exercise of the right of withdrawal leads to the reversal of the purchase contract, according to which the services received as part of the purchase contract must be refunded. Goods received must be returned within 14 days of the declaration of withdrawal at the latest. We will also refund any payments received within 14 days of the declaration of withdrawal. In the case of orders on account, this will be corrected in accordance with the revocation. The costs for the return shipment are to be borne by you.

Complaints

smart guarantee

If, after receiving their personalized order, the customer notices a subsequent error in their texts or images or damage to the post, smartphoto™ offers you the "smart guarantee" as a gesture of goodwill. To take advantage of this guarantee, all you need to do is contact us at service.en@smartphoto.ch within 14 days of receiving your order. Further information can be found at: [smartgarantie](#)

No guarantee for production and delivery times

smartphoto™ plans its capacities very carefully and using all available information so that the stated production deadlines can be met. Sudden, unexpectedly high demand (especially in the weeks before and after public holidays or after school vacations) or other unforeseeable events cannot be ruled out. Therefore, smartphoto™ cannot guarantee these production and delivery times and cannot be held liable for delays. With regard to postal delivery, we refer to the General Terms and Conditions of Swiss Post. The products will be delivered to the address provided by the customer when placing the order (this address will also be stated in the e-mail confirming acceptance of the order). Any return of the order due to the incorrect entry of the address when placing the order shall be at the customer's expense.

You can view the delivery times for the respective product on each product page under the heading "Delivery". Production times may vary depending on the product, as products must be personalized before shipping. Depending on the material, this lead time may be slightly shorter or longer. The customer is aware that delivery times also depend on upstream suppliers and logistics partners. An order with several products of the same product category can be sent in several parcels, depending on the size. In this case too, the shipping costs stated on the price list will only be charged once and the production and delivery time stated for the product category will apply (it is possible that individual parcels will not be delivered by the post office at the same time). An order with products from different product categories must be delivered in several parcels for technical reasons. The production and postal delivery time specified for the respective product applies to each package. For mixed orders, shipping costs are only incurred once. These are based on the product group with the highest shipping costs in your order. You can find the current shipping costs on the smartphoto™ online price list.

Payment

The purchase price for the products is always due when the customer places the order, plus the shipping costs incurred. At no time are the sums transferred to be regarded as a deposit or part payment.

The following payment options are available: invoice, Twint, credit card (VISA, Mastercard), Paypal. The currently selectable payment options are described [here](#). Your personal data will be forwarded to Intrum AG for the purpose of a credit check and may be stored there.

The transfer of card data to the bank server is securely encrypted using the SSL protocol via Adyen's online payment system. The data entered (card number and expiry date) is encrypted in this way. In order to offer you the best possible service, we may store your credit card details. If you wish, you can activate this option.

If you pay by invoice, you will receive a digital payment slip with a QR code by e-mail. If you have selected this option, a paper payment slip will be enclosed with your parcel. Please use the payment slip to pay within 30 days of the invoice date. To view the invoice, please go to www.smartphoto.ch and log in under "My pages". Invoices are only made available by smartphoto™ in this way. You can find your invoices under "My orders". We reserve the right to charge reminder fees and other collection efforts. The order will only be considered effective by smartphoto™ once payment via the bank account has been approved by the relevant authorities. If approval is refused by these authorities, the order will be canceled.

smartphoto™ reserves the right to suspend or cancel any order and/or delivery, regardless of its nature and stage of execution, if the total amount owed by the customer is not paid or in the event of payment incidents.

Default of payment

If the debtor has to be sent a reminder due to late payment, he will be charged reminder fees (1st reminder = CHF 4.- / 2nd reminder = CHF 10.- / 3rd reminder = CHF 18.-). All other expenses incurred in connection with the collection of overdue receivables shall be borne by the debtor. In the event of unsuccessful reminders, the invoice amounts may be assigned to a company entrusted with the collection, resulting in further costs in accordance with www.fairpay.ch. In this case, an additional effective annual interest rate of up to 10% may be charged from the due date.

Deviating agreements between smartphoto™ and the customer must be made in writing.

BEA

The calculation basis for the crediting of BEA points is the net order value (after any discounts or credit notes) excluding shipping and handling costs. 10 BEA points are credited for every 1 franc spent at smartphoto™. BEA points can only be collected at smartphoto™ for online orders via www.smartphoto.ch. Points can only be credited to BEA if customers click on the link provided by smartphoto™ and have opened a customer account with BEA. Retroactive crediting is not possible. smartphoto™ is not responsible for redeeming points or awarding rewards and is not liable. The validity and redemption of BEA points can be found in BEA's General Terms and Conditions. Only BEA enters into a contractual relationship with collectors of BEA points. If you have any complaints regarding the calculation of points or incorrect transfer of points, please contact BEA Customer Service on 056 444 22 22 or by e-mail at kundendienst@bea-verlag.ch

Discount codes

Promotional codes from smartphoto™ can be used for purchases on smartphoto.ch. These discount codes are not cumulative and cannot be combined. smartphoto™ accepts no responsibility for incorrectly used discount codes after completion of a purchase.

Acceptance / return of non-conforming products

The customer is obliged to check the condition of the packaging of the goods and their contents upon delivery.

smartphoto™ will only accept the return of ordered products made to customer specifications in the following cases:

- The products shipped do not correspond to the products ordered on the website. The e-mail confirming the registration of the order contains all the information about the products ordered (selected photos, formats and options) and allows the two parties to determine any error on the part of smartphoto™.
- The products delivered have defects linked to the product itself or to an incident in the manufacture of the personalized products.

If smartphoto™ does not receive a complaint from the buyer within 14 days of receipt of the products due to non-conformity or obvious defects of the delivered products, the products will be considered as conforming and without any obvious defects.

Statutory warranty

When delivering ordered products, we apply the statutory minimum warranty period of two years if the goods do not correspond to the order placed. This means that if the goods are defective, they can be repaired or replaced free of charge for up to two years after delivery. As far as possible and reasonable, you have the choice between repair or replacement. Only if the repair or replacement delivery is disproportionate or impossible or cannot be carried out within a reasonable period of time do you have the right to demand a price reduction or termination of the purchase contract. To make a claim under the statutory warranty, please contact us at service.en@smartphoto.ch. The statutory warranty does not apply if you were aware of the defect at the time of purchase or if the defect was caused by you.

Limitation of liability

Under no circumstances can smartphoto™ be held liable for damages resulting from the use of the website or app and the resulting services, such as loss of profit or loss of data. The liability of smartphoto™ for direct damage is limited to the amount paid by the user for the service that caused this damage.

Data protection

All personal data is always treated confidentially; you can find this under [Privacy policy](#) provisions.

Use of cookies

Further information on the use of cookies can be found under [Cookie policy](#).

Hosting (storage) / online albums

The user can register as a user on the smartphoto™ website and then has access to his customer data under "My pages". Access to this online account requires the entry of an e-mail address and a password. Under "My pages", the customer has the option of saving their digital images in a private online photo album. These images are stored free of charge with no time or storage space limit. Furthermore, the user has the option of giving friends and colleagues worldwide access to their photos stored at smartphoto™ by e-mail. Friends with a Swiss delivery address can order paper prints and other photo products from the images. All digital images and texts can only be deleted by the customer. Inviting further friends is reserved exclusively for the creator of the online album. If no digital order has been placed for more than 12 months, smartphoto™ expressly reserves the right to delete online albums. The customer is not permitted to upload photos or photo files to the album service that contain punishable, illegal or immoral, in particular pornographic, inciting or extremist content. smartphoto™ has

the right to remove, destroy and report photos or photo files containing such content from the customer's albums at any time.

Final provisions

Should individual provisions of the Terms and Conditions of Sale be wholly or partially invalid or contain a loophole, the validity of the remaining provisions or parts of such provisions shall remain unaffected. In such a case, the parties shall be obliged to cooperate in the creation of new provisions which come as close as possible to the economic effect of the invalid or incomplete provision while safeguarding the interests of both parties. Ancillary agreements have not been made and must be made in writing to be effective. If the customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction is that of the user of these provisions. smartphoto™ may also bring an action before the competent court at the customer's place of business.

Place of jurisdiction and applicable law

Subject to actions in connection with consumer contracts, all disputes arising in connection with the use of the smartphoto™ website and the online services shall be subject exclusively to the jurisdiction of the state courts at the registered office of smartphoto™ in Pratteln (Canton Baselland, Switzerland). Swiss law is exclusively applicable.