

# Standard Photographic Terms & Conditions of Engagement

## 1. LICENCE GRANTED TO CLIENT

"Licence" includes the "Standard Photographic Licence & Order Confirmation form, an estimate upon which verbal confirmation is given, any order confirmation given by the Photographer, or any work accompanied by an invoice for service.

The Photographer does not accept commissions to create copyright works other than to agree to licence such parts of the works selected by the Photographer for presentation to the Client. This overrides section 21(3) of the Copyright Act 1994 in accordance with section 21(4) of that Act.

The Photographer grants the Client a Licence to reproduce and publish the Photographic Works ("Photographic Works" includes transparencies, negatives, prints, digitised images or images in electronic or any other form or medium) for the purposes, territories and time period specified, and on the terms and conditions set out in the Licence and these Terms and Conditions of Engagement. If the Photographic Works have been produced for an Advertiser named in the Licence, the Works may only be used for the creative works of that Advertiser. The Photographer always retains the right to use the Photographic Works in any manner at any time and in any part of the world for the purposes of:

- Entering the Photographic Works into photographic competitions or awards and for their use in any material published in connection with promoting those competitions or awards; and
- Advertising or otherwise promoting the Photographer's Photographic Works; and
- Submitting the Photographic Works for display at art galleries or other premises; and
- Using the Photographic Works for any other purpose within the Photographer's business activities.

## 1.1. CONDITIONS OF LICENCE

- The Licence to use the Photographic Works begins from the date of full payment of the invoice except where the Photographer gives express written permission.
- This Licence must not be assigned to a third party without the Photographer's prior written permission, (which shall not be unreasonably refused), but may be sublicensed by the client on the same terms and conditions to the Advertiser named in the Licence.
- The Client is entitled to:
  - Use only a portion of the Photographic Works;
  - Manipulate, distort or make other alterations (including overprinting by text or other Photographic Works) to the Photographic Works, unless that right is expressly removed in the Licence.
- Copyright in any new Photographic Works created from any manipulation, alteration, distortion or overprinting of text of the licensed Photographic Works shall remain with the Photographer and shall be licensed to the Client on the same terms and conditions of this agreement.
- The Client shall not, without prior written permission of the Photographer, digitally capture or store Photographic Works in any form of electronic medium, except for the purpose of colour separation, and provided that the file or other medium in which the Photographic Works are captured or stored must be destroyed immediately after its use for that purpose.
- Any breach of these conditions knowingly permitted by the Client which results in damage to the professional reputation of the Photographer, entitles the Photographer to compensation from the Client for that damage in addition to any other remedies available to the Photographer.

## 2. COPYRIGHT OF THE WORKS

- Except as provided in clause 3, the copyright in all Photographic Works resulting from the Licence, remains the property of the Photographer.
- All copyrights that arise out of performance of the Photographer's obligations under this contract shall arise not by commission but shall be the creation of the Photographer. The Photographer shall remain the first owner of the Photographic Works and the Client shall be supplied with Works for copying on the terms of this Licence.
- The Client shall have the right to seek further licences for reuse of any copyright on agreement of a reasonable fee for that use.

## 3. COPYRIGHT ASSIGNED

Where this Licence specifies that copyright in the Photographic Works is assigned to the Client in consideration of the Client's payment for those Works, the Photographer assigns to the Client copyright in the Photographic Works supplied pursuant to the Licence. It is the responsibility of the Client to obtain all model releases, moral right waivers and privacy waivers necessary for the use of assigned copyright in the Photographic Works by that Client. As a condition of this assignment the Client agrees to indemnify the Photographer in respect of any liability to the Photographer arising from any use of the assigned copyright material.

## 4. MORAL RIGHTS

- Unless indicated on the Licence that the Photographer waives attribution rights (section 94-97 Copyright Act 1994), each use of any Photographic Work by the Client must be accompanied by an adjacent credit line acknowledging the Photographer's name and copyright in the Photographic Works in the form specified in the Licence, or if not so specified, then in a form approved in writing by the Photographer.
- If the Client fails (for whatever reason) to provide the attribution described in clause 4.1, then in addition to all other rights under this contract or at law, the Client shall be liable to pay a further Non-Attribution Fee calculated at 200% of the total invoice fee, which the Client acknowledges and agrees to be a fair and reasonable pre-estimate of the loss suffered by the Photographer.

## 5. DIGITAL WORKS

- Subject to automatic backup mechanisms and the express Terms of the Licence, the Client shall not copy or reproduce the Works by any means or in any form without the Photographer's written consent.
- The Client's right to use the Works under the Licence does not include the right to remove, alter or otherwise affect general rights information, including (without limitations) any notices or metadata accompanying or part of the Works which records creator details, copyright ownership or publication status of the Works.
- The Client shall not alter or remove any notices attached to the Works, and shall take all reasonable steps to respect and preserve the Photographer's copyright and other rights. Any notice which automatically appears on loading a Work shall not be made ineffective or non-displayable.
- Where the Photographer has placed restrictions on access to or use of the Works, the Client shall make no attempts to defeat such restrictions.
- The Photographer will follow their usual backup procedure (if any) upon the completion of Photographic Works. The Photographer will not be liable under any circumstances if unable to produce backups upon the request of the client.

## 6. PAYMENT

Fees are payable as outlined on the Licence or invoice of the Photographer. Any monies not paid in full in accordance with clause 8 may be charged with interest at a rate of 2.5% per month or part month overdue.

## 6.1. JOB-RELATED COST

The Client shall reimburse the Photographer for all Job-related Costs ("Job-related Costs" means any costs and expenses incurred by the Photographer on the Client's behalf in providing Photographic Services as detailed on any invoice). Where the Photographer makes payment to others on behalf of the Client, the Photographer may add a service charge, determined at the Photographer's absolute discretion. Unless otherwise arranged, the Client must pay all Job-related Costs and service charges to the Photographer within 7 days of receipt of the invoice. The Client is not entitled to any property in:

- Any authored or artistic works created by the Photographer to support the Photographic Works, or
  - Any materials used for the creation of an authored or artistic work, as a result of plans or drawings, which are commissioned by the Photographer, or
  - Any acquisition of goods for use in supporting the Photographic Works.
- Such goods, materials, authored or artistic works shall remain the property of the Photographer, unless otherwise agreed between the Photographer and the Client.

## 6.2. URGENT WORK

Where the Client requires Photographic Works on an urgent basis (which includes where the Photographer is unable to re-shoot or correct a shot because of an urgent deadline) the Photographer will not be liable for any losses or damages arising out of the inability to carry out a re-shoot or the costs of arranging a re-shoot.

## 7. CHANGES TO THE ESTIMATE

Statements of fees and Job related Costs are estimates and not firm quotations and are liable to alteration. The Photographer must bring any increase to the estimate, of 10% or more, to the attention of the Client. Any change to the job specifications made by the Client may change the estimate of the fees and Job related Costs.

## 8. CANCELLATION

- When a booking is confirmed as definite, the Client becomes liable for payment to the Photographer and the Photographer becomes liable to complete the shoot.
- Effective termination of this Agreement by the Client must be in writing and give reasonable notice to the Photographer. Upon receipt of such notice from the Client, the Photographer must take immediate steps to bring the photographic services to a close and to reduce expenditure to a minimum.
- Where the Client cancels the booking
  - Within 1 working day of the booked shoot day, the Client must pay a fee of 100% of the Photographer's standard fee.
  - Giving notice of cancellation of greater than 1 working day and within 3 days of the booked shoot

day, the Client must pay a fee of 50% of the Photographer's standard fee.

- Giving notice of cancellation of greater than 3 working days and within 1 week of the booked shoot day, the Client must pay a fee of 25% of the Photographer's standard fee.
- The Client must compensate the Photographer for all costs and expenses incurred.

The Client acknowledges and agrees that these cancellation fees fairly reflect the loss suffered by the Photographer and the Photographer's ability to re-schedule work and re-allocate resources, depending upon the amount of notice given.

## 9. POSTPONEMENT FEES

Where the Client postpones or changes the date of the shoot:

- Within 1 working day of the booked shoot day, the Client must pay a fee of 50% of the Photographer's daily fee for each day which is postponed.
  - With more than 1 working days notice, the Client must pay a fee of 25% of the Photographer's daily fee for each day which is postponed.
- The Client must compensate the Photographer for all costs and expenses incurred.
- The Client acknowledges and agrees that these postponement fees fairly reflect the loss suffered by the Photographer and the Photographer's ability to re-schedule work and re-allocate resources, depending upon the amount of notice given.

## 10. WORK SUSPENDED ON CLIENT'S INSTRUCTIONS

Where the Client instructs that work is to be suspended for a period of 30 days or more, the Client must, at the time of suspension, pay the Photographer for all work in progress at that time.

## 11. RETURN/DELETION OF PHOTOGRAPHIC WORKS

- The Client must return all Photographic Works, in the form of film, prints or other physical copies, undamaged to the Photographer within 15 working days from the date of expiry of the Licence.
- Any Digital files in the possession of the Client should, upon the expiry of the Licence, be deleted or destroyed.
- Where any Photographic Works have not been returned as required under 11.1, or deleted/destroyed as required under 11.2, then the Client must pay a fee of \$50 per day for each of the Photographic Works outstanding upon written demand by the Photographer.
- For each of the Photographic Works described under 11.1 that are lost or damaged, the Client must pay the Photographer \$1,500.00 within 7 days of the date of the expiry of the Licence.

## 12. CLIENT CONFIDENTIALITY

The Client must advise the Photographer if any material or information communicated to the Photographer is confidential. The Photographer must keep confidential material or information confidential, except where it is reasonably necessary to do otherwise to enable the Photographer to carry out the Photographer's obligations, or exercise any of the Photographer's rights in relation to the invoice.

## 13. RESPONSIBILITY FOR CONTRACTORS

- The Client is responsible for making all payments (including rollover fees) and fulfilling all other obligations to person(s) ("Contractors") who supply any product or perform any service in respect of the shoot.
- Where Contractors are models, the Client is responsible for obtaining all necessary model releases. To ensure proper recording of others' intellectual property rights, which may be part of the Photographic Works, the Client shall, on a request by the Photographer, provide evidence of these model releases to the Photographer.
- Where the Client requests the Photographer to engage Contractors, the Photographer acts as agent for the Client and the Client indemnifies the Photographer against all costs, disbursements and other obligations arising from that agency.

## 14. INDEMNITY FOR BREACHES OF INTELLECTUAL PROPERTY

- The Client shall fully indemnify the Photographer against any claims, costs, or expenses (including legal costs on a Solicitor/ Client basis) arising out of any illegal or defamatory Photographic Works produced for the Client, or any infringement or alleged infringement of any intellectual property right of any person.
- The Client is responsible for obtaining any authorisation, clearance, licence or other form of approval necessary for the lawful use of third party intellectual property works.

## 15. CLIENT PROPERTY AND MATERIALS SUPPLIED

- Client property and all property and material supplied to the Photographer by or on behalf of the Client is held at the Client's risk and the Photographer accepts no responsibility for the insurance of such property or material.
- The Client must pay any sum charged by the Photographer for handling or storing property or material supplied by or on behalf of the Client.
- Where property and materials are left with the Photographer without specific instructions, the Photographer may dispose of them at the end of six months from the date of receiving them and retain the proceeds.

## 16. PHOTOGRAPHIC WORK OF UNACCEPTABLE QUALITY

- Where Photographic Works are not of an acceptable technical quality, making it unfit for the purpose of its specified use, then no fee or Job-related Costs are due to the Photographer. The Photographer has the right to rectify the defect causing the rejection within a reasonable time, having regard to the urgency of the work. If rectified, the Photographer is entitled to their fee and Job related costs but may not charge the Client any extra fee or cost for rectifying the defect.
- Where there is a representative of the Client at the shoot, the representative is responsible for the direction of the work. Acceptance of the work by this representative is confirmation that the Photographer has satisfied the artistic quality and interpretation requirements of the shoot. If the representative is not at the shoot then the Photographer's judgement is absolute within the limits imposed by any documented agreements on the nature of the intended work.
- If the Photographer produces Photographic Works that are in the same style and structure as the Photographer's past work (by reference to the Photographer's portfolio), the Client is deemed to have accepted the Photographer's artistic interpretation.
- If there is a dispute as to artistic interpretation, which is unresolved after negotiations between the Photographer and the Client, then the dispute shall be referred to the President of the Advertising and Illustrative Photographers Association who shall appoint an independent Photographer to determine the matter.
- The independent Photographer elected will assess the work according to the Client brief and the Photographer's past work (by reference to the Photographer's portfolio).

## 17. WEATHER CONDITIONS

- A weather permitting booking must be agreed between the Client and Photographer prior to the shoot. Upon postponement or cancellation of a shoot due to bad weather the Client must pay the Photographer all expenses incurred up until the time that the shoot was postponed and 50% of the Photographer's fee which was to be charged for the shoot.
- The Client is responsible for taking out weather insurance.

## 18. CONSUMER GUARANTEES ACT 1993 APPLICATION

The Client acknowledges that where the Photographer Works or Photographic Services ("Photographic Services" means the provision by the Photographer of services related to the producing of Photographic Works and includes the supply of any other goods or services by the Photographer) supplied under the invoice and Licence are purchased for business purposes, the Consumer Guarantees Act 1993 shall not apply.

## 19. PHOTOGRAPHER NOT LIABLE FOR LOSSES

- Except as provided for by the Consumer Guarantees Act 1993, the Photographer shall not be liable for:
- Any loss or damage arising by reason of any delay in the completion of the Photographic Works.
  - Any loss of profits.
  - Any indirect or consequential loss of whatever nature; or
  - Any loss resulting from any errors or omissions arising from an oversight or a misinterpretation of a Client's verbal instructions.

## 20. LIABILITY OF PHOTOGRAPHER LIMITED

Except where provided to the contrary by the Consumer Guarantees Act 1993, the Photographer's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or connected with the performance or failure of performance of any Photographic Works or Photographic Services supplied by the Photographer shall not exceed the full value of the payments made by the Client under the invoice.

## 21. INDEMNITY FOR BREACH OF TERMS AND CONDITIONS

The Client undertakes to indemnify the Photographer for any loss, damage, or expense (including costs on a Solicitor/Client basis) suffered or incurred as a result of any breach by the Client of these conditions or in recovering any monies due and such loss, damage or expense shall be monies due for the purposes of these terms and conditions.



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