

WYATT-CLARKE & JONES LIMITED: TERMS & CONDITIONS OF BUSINESS

1) DEFINITIONS

For the purposes of this agreement, "the Client" is the party commissioning a Photographer via the Photographer's Agent WYATT-CLARKE & JONES LIMITED and "Client" shall, where the context so admits, include its respective assignees, sub-licensees and successors in title. "Photographs" & "Photography" means all photographic material furnished by the Photographer, whether transparencies, negatives, prints or any other type of physical or electronic material. These terms and conditions shall also apply to all shoots estimated by the Photographer's Agent, whether invoiced to the Client by the Agent or by the Photographer.

2) COPYRIGHT AND OWNERSHIP OF MATERIALS

The entire copyright in the Photographs and ownership of all physical materials is retained by the Photographer at all times throughout the world. Where Photographs are stored electronically, they must be erased at the conclusion of the agreed usage period. When the Licence to Use the material has expired, the Photographs must be returned to the photographer in good condition within 30 days. A high-resolution digital file, pdf format file or good quality hard copy of the Photography in the context for which it was commissioned should be supplied upon request to the Photographer free of charge following publication.

3) USE

The Licence to Use (normally the invoice) comes into effect from the date of full payment of the relevant invoice(s). No use may be made of the Photographs before payment in full of the relevant invoices(s) without the Photographer's express permission. Any permission that may be given for prior use will automatically be revoked if full payment is not made by the due date or if the Client is put into receivership or liquidation. The period of usage commences from date of first use (or 6 months after shoot date, whichever is sooner, unless otherwise agreed). Photography fees are based on a Licence to Use the Photographs within the constraints specified on the estimate. The Licence to Use only applies to the advertiser and products as stated on the invoice and its benefit shall not be assigned to any third party without the Photographer's written permission. Accordingly, even where any form of 'All Media Licence' is granted, the Photographer's permission must be obtained before any use of the Photographs for other purposes e.g. use in relation to another product or sub-licensing through a photolibrary.

4) RE-USAGE

Permission to use the Photographs for purposes outside the terms of the Licence to Use will normally be granted upon payment of a further fee. Any future changes / extensions to the Licence to Use must be negotiated with WYATT-CLARKE & JONES LIMITED. Any estimates of usage fees to the Client are valid for a period of three months only (excepting such terms as model agencies may impose) from the date of the estimate. Any unauthorised use of the Photographs will be charged at the maximum percentage stated in the Association of Photographers' re-usage guidelines and this will supersede any previous estimate usage. All further licences in respect of the Photographs will be subject to WYATT-CLARKE & JONES LIMITED's terms and conditions. Fees negotiated for any further uses licensed will not be conditional on the exercise of the further rights granted and will be payable once invoiced. Any usage extensions must be negotiated with WYATT-CLARKE & JONES LIMITED.

5) EXCLUSIVITY

The Client will be authorised to publish the Photographs to the exclusion of all other persons including the Photographer. However, the Photographer retains the right in all cases to use the Photographs in any manner, at any time and in any part of the world for the purpose of advertising or otherwise promoting his/her work, unless otherwise agreed. An exclusivity period of five years is granted to the client unless otherwise agreed. After the exclusivity period the Photographer shall be entitled to use and license others to use the Photographs for any purposes.

6) CLIENT CONFIDENTIALITY

The Photographer will keep confidential and will not disclose to any third parties or make use of material or information communicated to him/her in confidence for the purposes of the Photography, save as may be reasonably necessary to enable the Photographer to carry out his/her obligations in relation to the commission.

7) INDEMNITY

The Photographer shall only be responsible for obtaining any clearances in respect of third party copyright works, trade marks, designs or other intellectual property if this has been expressly agreed in writing before the shoot. In all other cases the Client shall be responsible for obtaining such clearances and for determining whether such clearances are necessary and will indemnify the Photographer against all expenses, damages, claims and legal costs arising out of any failure to obtain such clearances.

8) PAYMENT

Payment by the Client is expected for the commissioned work within 30 days of the issue of the relevant invoice. If the invoice is not paid in full within 30 days the Photographer reserves the right to charge interest at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the date payment was due until the date payment is made.

9) EXPENSES

All figures provided are estimates and not a quotation, and the Client should therefore allow a 10% contingency budget in all cases. All estimated costs are VAT exclusive. All expenses and production costs must be paid in advance of the shoot or on demand as applicable. The Photographer will work within the agreed cost estimate ceiling, but individual costs within the estimate may vary at his/her discretion to enable the most effective pursuance of the brief. Back-up receipts can only be provided if requested prior to shoot confirmation. If "back-up" is required there will be an accountancy charge of 1.5% of the shoot total subject to a minimum charge of £250 and a maximum

of £600. Where extra expenses or time are incurred by the Photographer as a result of alterations to the original brief by the Client, or otherwise at its request, the Client shall be liable to pay such extra expenses or fees, at the Photographer's normal rate, in addition to the original estimate agreed.

10) REJECTION

If the Client is not present during the shoot then the Photographer's interpretation of the brief is deemed acceptable to the Client. There is no right to reject on the basis of style or composition. In the event of any rejection, Fees payable to Photographer should be 100% of professional fees estimated or the stated B.U.R. rate per day, whichever is greater. Photographer reserves the right to charge any Expenses (as defined below) to client.

11) CANCELLATION & POSTPONEMENT

If a confirmed shoot is cancelled or postponed for reasons (including unsuitable weather / light) outside the control of the Photographer, the Photographer reserves the right to charge a cancellation fee at the following rates together with all incurred expenses: On shoots of two days duration or less, cancellation within 2 days notice = 100% of fees + expenses. Between 3 & 6 days notice = 75% fees + expenses. 7 days notice and over = 50% fees + expenses. On shoots in excess of 2 days duration, cancellation within the number of shoot days or less = 100% of fees + expenses, within twice the number of shoot days = 75% fees + expenses, in excess of twice the number of shoot days 25% fees + expenses. 'Fee' means Photographer's fees as they appear on the estimate. 'Days' mean working days. 'Shoot Duration' includes all shoot, travel, recce, preparation or test days. 'The Shoot' is defined as the number of confirmed days whether the job is undertaken as a whole or in separate parts. 'Expenses' include any and all costs incurred by the Photographer pursuant to the Client's brief.

12) RIGHT TO CREDIT.

The Photographer's name must be printed on or in reasonable proximity to all published reproductions of the Photographs. This applies to all editorial uses and in other cases if stated on the estimate.

13) THE PHOTOGRAPHER'S AGENT

We are solely agents and accept no liability for the acts or omissions of the Photographer commissioned.

14) PHOTOGRAPHER'S LIABILITY

The Photographer's entire liability to the Client in respect of any breach of its contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with any shoot carried out for the Client shall be limited to the Photographer's agreed fees in relation to that shoot. The Photographer shall not be liable to the Client for any loss of profit, loss of contracts, loss of business or revenues, loss of production or for any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Photographer, the Photographer's servants or otherwise) which arise out of or in connection with the shoot. Notwithstanding the above, nothing in these terms and conditions excludes or limits the liability of the Photographer for death or personal injury caused by the Photographer's negligence or that of his/her employees, agents or sub-contractors, for any fraudulent statement or act or for any matter which it would be illegal for the Photographer to exclude or attempt to exclude his/her liability.

15) THIRD PARTY TERMS

Bookings of third party suppliers, including models, are subject to such terms and conditions as these parties may impose and are available on request. Model fees estimated cover modelling time only and not usage unless otherwise stated on the estimate. Items created specifically for the shoot shall remain the property of the originator unless agreed otherwise.

16) ELECTRONIC STORAGE

Save for the purposes of reproduction for the licensed use(s), the Photographs may not be stored in any form of electronic medium nor passed onto any third party, including for the avoidance of doubt any associated or branch office of the Client, without the written permission of the Photographer. Manipulation of the image or use of only a portion of the image may only take place with the permission of the Photographer. Where The Photographs are captured/delivered to Client in digital format, after first delivery of images it is The Client's responsibility to archive these images. The Client should treat the delivered files carefully, (noting that CD and DVD are unreliable archival media) and keep a safe copy for the duration of the license. Neither The Photographer nor The Agent will archive any shoot material unless by prior written agreement.

17) APPLICABLE LAW

This agreement shall be governed by the laws of England & Wales and subject to the exclusive jurisdiction of the English Courts.

18) VARIATION.

These Terms and Conditions shall not be varied except by agreement in writing signed by both parties.

19) ENTIRE AGREEMENT

This agreement constitutes the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangements not expressly set forth in this agreement save for any representation made fraudulently.