

1. APPLICATION OF TERMS

1.1 These terms and conditions will:

1.1.1 apply to all Assignments undertaken by Agent's photographers for Commissioner and to all Usage Licences or extended and/or additional Usage Licences relating to such Assignments; and

1.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in Commissioner's purchase order, confirmation of order, acceptance of Estimate, or specification or other document supplied by Commissioner, or implied by law, trade custom, practice or course of dealing

2. DEFINITIONS

"Agent" means Photographer's appointed agent whose details are set out in the Estimate and invoice(s) for an Assignment.

"Assignment" means a commission by Commissioner of Photographer for provision of Photographer's services at a shoot for the purpose of creating the Material and negotiated through Agent and whether invoiced to Commissioner by Agent or by Photographer.

"Client" means any client of Commissioner for whose benefit or use material is commissioned.

"Commissioner" is the party commissioning a Photographer via Agent and includes Commissioner's affiliates, assignees, and successors in title.

"Day" mean working day.

"Estimate" means any email or other document electronic or otherwise created by Agent and setting out the Fee and expenses for any Assignment along with information as to Usage Licences.

"Fee" means Photographer's fees as set out in the Estimate.

"Licensed Photographs" means a number of images selected from the Material and as specified in the Estimate as licensed for use in accordance with these terms

"Material" means all photographic material created by Photographer pursuant to an Assignment and includes but is not limited to transparencies, negatives, prints or any other type of physical or electronic material.

"Shoot Duration" means the number of confirmed days of a shoot whether undertaken consecutively or in separate parts and includes all shoot, travel, recce, preparation or test days.

"Usage Licence" see clause 3.3 below

3. ESTIMATES

3.1 Estimates provided by Agent at Commissioner's request are based upon the information provided by Commissioner in advance of preparing the Estimate.

3.2 Changes to the requirements for an Assignment before or during a shoot may increase the Fee and expenses.

3.3 Estimates shall specify the number and characteristics of Licensed Photographs which the Commissioner shall be entitled to use and the territories in and durations for which they may be used and these shall be the terms of the **Usage Licence**.

3.4 Commissioner is responsible for checking the Estimate to ensure that it provides for all required usage.

3.5 Unless otherwise agreed in writing the arrangement of a shoot date(s) shall be deemed to be acceptance of the Estimate.

4. CONDUCT OF THE SHOOT

4.1 The shoot will be arranged on date(s) mutually agreed between the parties.

4.2 During the shoot Photographer will take account of Commissioner's reasonable instructions in respect of the shoot brief.

4.3 If Commissioner is not present during the shoot then Photographer's interpretation of the brief shall be deemed acceptable to Commissioner.

5. CANCELLATION OF SHOOT

5.1 If a confirmed shoot is cancelled or postponed for reasons outside the control of Photographer (including unsuitable weather / light), Photographer reserves the right to charge a cancellation fee at the following rates together with all incurred expenses:

On Shoot Duration of two days or less:

5.1.1 cancellation on 2 days notice - 100% of Fee + all expenses; or

5.1.2 on 3 to 6 days notice - 75% of Fee + all expenses; or

5.1.3 on 7 days notice and over - 50% of Fee + all expenses.

On Shoot Duration in excess of 2 days and on notice equivalent to:

5.1.4 the Shoot Duration or less -100% of Fee + all expenses

5.1.5 twice the Shoot Duration - 75% of Fee + all expenses

5.1.6 in excess of twice the Shoot Duration 25% of Fee + all expenses.

6. ACCEPTANCE & DELIVERY

6.1 Following completion of the shoot Photographer will deliver the Material to Commissioner as soon as reasonably practicable and in the agreed format to enable Commissioner to select the Licensed Photographs.

6.2 Unless expressly agreed in writing between the parties Commissioner shall not be entitled to reject the Material on the basis of style or composition.

6.3 If Commissioner elects to reject the Material on any other basis he shall be liable to pay to Photographer 100% of the Fee + expenses in respect of the Assignment or the Base Use Rate per day stated in the Estimate + expenses incurred, whichever is greater.

7. STORAGE OF MATERIAL

7.1 Commissioner shall ensure that he takes appropriate steps to keep safe a high resolution digital copy of all Material for the duration of the Usage Licence. For the avoidance of doubt CD/DVD archives are not deemed safe storage media. Neither Photographer nor Agent will archive any Material unless by prior written agreement.

7.2 Save for the purposes of the Usage Licence the Material may not be stored in any electronic medium nor transmitted to any third party, including for the avoidance of doubt any associated or branch office of Commissioner, without the written permission of Photographer.

7.3 Upon publication of the Licensed Photographs or any of them and on Photographer's request Commissioner shall supply to Photographer free of charge a high-resolution digital file, PDF format file or good quality hard copy of the Licensed Photograph in the context in which it is published.

8. COPYRIGHT & USAGE LICENCES

8.1 The entire copyright in the Material and ownership of all physical materials is retained

by Photographer at all times throughout the world.

8.2 Commissioner is responsible for informing Client of the extent and limitations of all Usage Licences.

8.3 Upon payment in full of both the Fee and expenses for an Assignment Photographer grants to Commissioner the right to use the Licensed Photographs on the express terms of the Usage Licence. **No use may be made before payment without the Photographer's express agreement in writing.**

8.4 Provided that Commissioner has paid in full all invoices relating to the Assignment the period of use specified in the Usage Licence commences from the date of first use or 6 months after the shoot date, whichever is sooner (unless otherwise agreed).

8.5 Usage of the Licensed Photographs is limited to use of such images as provided by Photographer and Commissioner shall not manipulate any Licensed Photograph or make use of only part of any individual image without the prior written permission of Photographer.

8.6 Commissioner may only sub-licence the rights to use the Licensed Photographs to the disclosed Client as agreed by Agent and strictly on the terms of the Usage Licence.

8.7 Neither Commissioner nor Client may use the Licensed Photographs in relation to any additional products not specified in the Usage Licence.

8.8 Any licence to use the Licensed Photographs shall be automatically revoked if payment in full of both Fee and expenses for an Assignment is not received by the due date specified in the relevant invoices or if the Commissioner or Client becomes insolvent or is put into receivership or is subject to any of the matters set out in clause 19.1.2 below.

9. ADDITIONAL/EXTENDED USAGE

9.1 The Fee is based on the Usage Licence as specified in the Estimate, any additional or extended use will attract an additional fee which must be agreed by Agent in advance.

9.2 Any estimates of additional or extended usage licence fees provided to Commissioner are valid for a period of three months from the date of the estimate only (unless otherwise notified in writing).

9.3 Commissioner acknowledges that such estimates do not include provision for any third party rights which are the responsibility of Commissioner pursuant to clause 11 below.

9.4 Commissioner shall procure that Client requests any necessary extended or additional usage licence(s).

9.5 Any extended or additional use made without permission shall be treated as a flagrant disregard for Photographer's copyright and shall attract an enhanced fee at the maximum percentage stated in the Association of Photographers' re-usage guidelines.

10. EXCLUSIVITY

10.1 All Usage Licences granted by Photographer to Commissioner shall be exclusive licences.

10.2 Regardless of the period of use of any Usage Licence(s) or extension thereof Photographer undertakes not, for a period of 3 years from the date of the relevant shoot, to grant any other licence in respect of the Material to any third party.

10.3 After expiry of the exclusivity period Photographer shall make such use of the

Material including the Licensed Photographs as he sees fit.

10.4 Nothing in this clause shall prevent Photographer from using the Material in any form and in any manner worldwide for the purpose of promoting his services and those of Agent.

11. THIRD PARTY RIGHTS

11.1 Engagements of third party suppliers, including models, are subject to such terms and conditions as those parties may impose which shall be available on request.

11.2 Estimated model fees cover modelling time only and Commissioner shall be responsible for clearing model usage unless otherwise stated on the estimate.

11.3 Items created specifically for the shoot shall remain the property of their creator unless agreed otherwise.

11.4 Photographer shall not be responsible for obtaining any clearances in respect of third party copyright works, trade marks, designs or other intellectual property used in relation to the Assignment or any Usage Licence or extension thereof unless expressly agreed in writing prior to the shoot.

12. CREDITS

12.1 In respect of all editorial uses and otherwise as additionally stated in the Estimate Commissioner shall procure that Photographer's name is printed on or in reasonable proximity to all published reproductions of the Licensed Photographs.

13. PAYMENTS

13.1 All expenses and production costs must be paid in advance of the shoot unless otherwise agreed in writing and such invoices are due on presentation.

13.2 All invoices must be paid within 30 days of the date of issue. Photographer reserves the right to charge interest on late payments 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.

13.3 Usage Licence and any other third party fees negotiated by Photographer are payable regardless of whether Licensed Photographs are in fact used by Commissioner or Client.

13.4 All payments are due in pounds sterling unless expressly stated otherwise.

14 EXPENSES

14.1 All expenses figures provided in advance of a shoot are estimates only and Commissioner should allow a minimum 10% contingency budget in all cases. All estimated costs are stated exclusive of VAT.

14.2 Photographer will endeavour to work within the agreed cost estimate, but individual costs within the estimate may vary at his/her discretion to enable the most effective pursuance of the brief.

14.3 Receipts for expenses can only be provided if requested prior to shoot confirmation. Provision of receipts will incur an accountancy charge of 1.5% of total costs and fees incurred in respect of the Assignment subject to a minimum charge of £250 and a maximum of £600.

14.4 Where extra expenses or time are incurred by Photographer as a result of alterations to the original brief by Commissioner, or otherwise at its request, Commissioner shall be liable to pay such extra expenses and additional fees at Photographer's normal rate.

15. RETURN OF MATERIALS

15.1 Within 30 days of expiry of any Usage Licence the Material must be returned to Photographer in good condition and any digital files stored by Commissioner must be deleted.

16. INDEMNITY

16.1 Commissioner shall indemnify Photographer and Agent and keep them indemnified and their respective officers and employees on a continuing basis against all liabilities, claims, costs, damages and expenses claimed or incurred (including reasonable and direct legal costs) or licence fees due by reason of any infringement claim, or alleged infringement, of any intellectual property rights relating to any failure by Commissioner to obtain third party clearances or arising out of use of the Material by Commissioner or Client outside of the Usage Licence or otherwise as a result of any breach by Commissioner of these terms.

17. EXTENT OF LIABILITY

17.1 Photographer & Agent shall not be liable to Commissioner 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 Photographer, Agent, Photographer's servants or otherwise) which arise out of or in connection with the shoot.

17.2 Photographer's & Agent's maximum aggregate liability for all losses, damages, costs, claims and expenses howsoever or whensoever arising out of or in connection with these Terms shall in any event be limited to the total amount of the agreed fees paid to Photographer in relation to the relevant Assignment.

17.3 Notwithstanding the above, nothing in these terms excludes or limits the liability of Photographer or Agent for death or personal injury caused by Agent or 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 to exclude.

17.4 Photographer and Agent hereby disclaim any warranties, conditions and other terms on or relating to the services hereunder or any parts thereof which might otherwise be implied whether by statute, law, custom, course of dealing or otherwise, including without limitation any warranty, condition, or other terms of merchantability, quality, fitness for purpose or non-infringement to the fullest extent permitted by law.

17.5 Agent shall not be responsible for the acts or omissions of Photographer.

18. CONFIDENTIALITY

18.1 Photographer & Agent 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 Assignment, save as may be reasonably necessary to enable Photographer and/or Agent to carry out his/her obligations in relation to the Assignment.

18.2 It shall be the sole responsibility of Commissioner to arrange for any third party involved in the Assignment to enter into any confidentiality agreement.

18.3 Neither photographer nor Agent will be liable for any breach of confidentiality by any third party.

19. TERMINATION

19.1 Either party will be entitled to terminate these Terms immediately by giving written notice to the other if the other party:

19.1.1 commits a material breach of these Terms and fails to remedy that breach within 30 days after receipt of written notice requesting its remedy; or

19.1.2 is the subject of a bankruptcy order or becomes insolvent or makes any arrangement or composition with or assignment for the

benefit of its creditors or if any of the other party's assets are the subject of any form of seizure, or the other party goes into liquidation either voluntary (otherwise than for reconstruction or amalgamation) or compulsory, or a receiver or administrator is appointed over the other party's assets.

20. EFFECTS OF TERMINATION

20.1 On termination or expiry of these Terms for whatever reasons:

20.1.1 Commissioner shall pay all sums due and owing the date of which will be automatically accelerated to the date of termination.

20.1.2 The provisions of Clauses 2, 3.3, 7, 8, 9, 10, 11, 12, 15, 16 17 and 18 shall survive expiry or termination.

20.2 Any termination and/or suspension of these Terms shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party.

21. FORCE MAJEURE

21.1 Neither Photographer or Agent shall be liable for any failure or delay in the performance of any of such party's obligations under these Terms caused by any circumstances beyond such party's reasonable control.

22. GENERAL

22.1 **Waiver:** No delay or omission by a party in exercising any right or remedy under these Terms shall operate to impair such right or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right or remedy shall not preclude any further exercise or the exercise of any other right or remedy.

22.2 **Assignment/Sub-contracting:** Neither party shall be entitled to assign, transfer, delegate or sub-contract the whole or any part of its rights and obligations under these Terms without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

22.3 **Notices:** Any notice under these Terms shall be duly given if: (a) delivered personally; or (b) sent by pre-paid post, in which case it shall be deemed to have been received 48 hours] after posting; or (c) sent by fax, in which case it shall be deemed to have been received when transmitted.

22.4 **Entire Agreement and Variation:** These Terms and the Estimate constitute the entire agreement between the parties with respect to the subject matter.

22.5 **Severability:** If any part of these Terms is found by any court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the Agreement and the remainder shall continue to be valid and enforceable to the fullest extent permitted by law.

22.6 **Relationship:** Nothing in these Terms shall be construed so as to give rise to any agency, joint venture, partnership or relationship of employer and employee.

22.7 **Third Party Rights:** The provisions of these Terms are for the benefit of the parties and are not intended to confer upon any person except the parties any rights or remedies hereunder. No person who is not a party to these Terms shall have any right to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

22.8 **Law and Jurisdiction:** These Terms are governed by English law, the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts save in respect of the enforcement of debts in which case such jurisdiction shall be non-exclusive.