

STANDARD TERMS & CONDITIONS OF BUSINESS

1. APPLICATION OF TERMS

1.1 These terms and conditions will:

1.1.1 apply to all Assignments undertaken by the Photographer for the Client 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 the Client's purchase order, confirmation of order, acceptance of Estimate, specification or other document supplied by the Client, unless a later written agreement expressly accepted by both Parties states that it varies these Terms. If a separately signed or accepted NDA or confidentiality agreement conflicts with these Terms, that agreement governs confidentiality, disclosure, security and handling of confidential information to the extent of the conflict; these Terms and the accepted Estimate or Schedule govern fees, services, copyright and usage licensing unless the later agreement expressly states otherwise.

2. DEFINITIONS

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

"Assignment" means a commission by the Client of the Photographer for provision of Photographer's services at a shoot for the purpose of creating the Material.

"Advertiser" means any client of the Client for whose benefit or use the Material is commissioned.

"Client" is the party commissioning the Photographer and includes the Client's affiliates, assignees, and successors in title.

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

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

"Licensed Images" means the still and/or moving images selected from the Material and as specified in the Estimate as to be licensed for use in accordance with these Terms.

"Material" means all photographic material created by the Photographer pursuant to an Assignment and includes but is not limited to transparencies, negatives, prints, digital files or any other type of physical or electronic material recording either still or moving images.

"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" means the licence to use the Licensed Images as set out in clause 3.3 and clause 9 below.

"Schedule" means a written quotation schedule, licence schedule or project-specific specification accepted by the Client which records the scope, deliverables, licence and any project-specific conditions.

"Working Files" means source and production files created or used by the Photographer in preparing the Material, including RAW files, Capture One sessions and catalogues, selects, outtakes, layered files, working edits, associated notes and embedded metadata, whether or not supplied as deliverables.

"Working Day" means a day that is not a Saturday or Sunday or any day that is a Bank Holiday in England and Wales.

"B.U.R." means Base Usage Rate and is the figure by reference to which additional usage fees to the usage fees stated on the Photographer's original Estimate as accepted by the Client are established.

3. ESTIMATES

3.1 Estimates provided by the Photographer are based upon the information provided by the Client 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 The Estimate may specify the images anticipated to be licensed and the proposed terms of use. Image selection may change as the Assignment and subsequent production develop. The final Licensed Images and applicable Usage Licence shall be confirmed in the invoice. Where changes to image selection, deliverables or usage involve additional work, costs or an extension of the Usage Licence, any additional fees shall be discussed with the Client and agreed as appropriate.

3.4 Unless otherwise agreed in writing the Client's agreement of shoot date(s) shall be deemed to be acceptance of the Estimate.

3.5 If no B.U.R. has been stated, it will be equivalent to the Photographer's day shoot fee.

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 the Photographer will take account of the Client's reasonable instructions in respect of the shoot brief.

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

5. OVERTIME AND ANTISOCIAL HOURS

5.1 A normal day is up to 9 hours (including 1 hour for lunch) between 9am and 6pm on any Working Day.

5.2 Any hours worked outside a normal day ("Antisocial Hours") will incur additional overtime fees for the Photographer, crew and facilities. These will be agreed between the Parties.

5.3 Additional fees for crew, facilities and any other third parties required to work Antisocial Hours shall be as set out in their standard terms or otherwise negotiated.

6. CANCELLATION OF SHOOT

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

On a Shoot Duration of two days or less:

- 6.1.1 cancellation on less than 3 Working Days' notice, 100% of Fee + all expenses; or
- 6.1.2 on 3 to 6 Working Days' notice, 75% of Fee + all expenses; or
- 6.1.3 on more than 6 Working Days' notice, 50% of Fee + all expenses.

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

- 6.1.4 the Shoot Duration or less, 100% of Fee + all expenses; or
- 6.1.5 more than the Shoot Duration but not more than twice the Shoot Duration, 75% of Fee + all expenses; or
- 6.1.6 more than twice the Shoot Duration, 25% of Fee + all expenses.

7. ACCEPTANCE & DELIVERY

- 7.1 Following completion of the shoot the Photographer will deliver the Material to the Client as soon as reasonably practicable and in the agreed format to enable the Client to select the Licensed Images.
- 7.2 Subject to any previously agreed deadlines for post-production work the Photographer will carry out any such work required as soon as reasonably practicable but cannot guarantee urgent turnaround.
- 7.3 Unless expressly agreed in writing between the Parties the Client shall not be entitled to reject the Material on the basis of style or composition.

8. STORAGE OF MATERIAL

- 8.1 The Client shall ensure that it takes appropriate steps to keep safe an exact digital copy of all Material supplied for the duration of the Usage Licence. The Photographer will not be responsible for archiving any Material unless by prior written agreement with the Client.
- 8.2 The Client and Advertiser may store, reproduce and share the Licensed Images with their agencies, printers, publishers, PR agencies and other professional partners as reasonably required to exercise the Usage Licence. Such sharing shall be for the purposes of the licensed use and shall not extend the rights granted under the Usage Licence
- 8.3 Upon the Photographer's request the Client shall supply to the Photographer free of charge a high-resolution digital file, PDF format file or good quality hard copies of the Licensed Images in the context in which they are published.

9. COPYRIGHT & USAGE LICENCES

- 9.1 The entire copyright and all similar rights throughout the world in all the Material and ownership of all physical materials created by or for the Photographer shall vest in and be retained by the Photographer at all times.
- 9.2 The Client is responsible for informing the Advertiser of the extent and limitations of all Usage Licences.
- 9.3 Upon payment in full of both the Fee and expenses for an Assignment the Photographer grants to the Client the right to use the Licensed Images on the express terms of the Usage Licence. No use may be made before payment in full without the Photographer's express agreement in writing.
- 9.4 Provided that the Client 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 six months after delivery of the final Licensed Images, whichever is sooner (unless otherwise agreed in writing).
- 9.5 Use of the Licensed Images is limited to the rights expressly granted in the Usage Licence. The Client and Advertiser shall not materially alter, composite, remove identifying metadata from, or use only part of an image in a way that changes its meaning or materially misrepresents the Photographer's work without prior written permission. Routine production adjustments reasonably required for the licensed use, including resizing, format conversion, ordinary cropping, colour correction and conventional retouching, are permitted provided they do not materially distort the image or misrepresent the work.
- 9.6 The Client may only sub-license the right to use the Licensed Images to the disclosed Advertiser as agreed and strictly on the terms of the Usage Licence.
- 9.7 Neither the Client nor the Advertiser may use the Licensed Images in relation to any additional products or services not specified in the Usage Licence.
- 9.8 Any licence to use the Licensed Images shall automatically be revoked if payment in full of both the Fee and expenses for an Assignment is not received by the due date specified in the relevant invoices or if the Client or Advertiser becomes insolvent or is put into receivership or is subject to any of the matters set out in clause 20.1.2 below.

10. ADDITIONAL/EXTENDED USAGE

- 10.1 The Fee is based on the Usage Licence as specified in the Estimate. Any additional or extended use (including for the avoidance of doubt the use of individual still frames from licensed moving image footage) will attract an additional fee which must be agreed by the Photographer in advance.
- 10.2 Any estimates of additional or extended usage licence fees provided to the Client are valid for a period of three months from the date of the estimate only (unless otherwise notified in writing).
- 10.3 The Client acknowledges that such estimates do not include provision for any third-party rights which are the responsibility of the Client pursuant to clause 12 below.
- 10.4 The Client shall procure that the Advertiser requests any necessary extended or additional usage licence(s).
- 10.5 Any extended or additional use made without permission shall attract an additional fee.

11. EXCLUSIVITY

- 11.1 All Usage Licences granted by the Photographer to the Client shall be exclusive to the Advertiser and the Client unless otherwise agreed in writing.
- 11.2 Unless a different period or scope of exclusivity is expressly agreed in writing, the Photographer undertakes, subject to clause 11.4, not to grant any other licence to a third party to use the Licensed Images for a period of two years from the date of the shoot. The duration of the Client's Usage Licence shall not, by itself, extend this exclusivity period. Any longer or perpetual exclusivity must be expressly agreed in writing.
- 11.3 After expiry of the applicable exclusivity period, the Photographer may license the Licensed Images to other parties and otherwise make use of the Material, including the Licensed Images, as the Photographer sees fit, subject

to any other restrictions expressly agreed in writing.

11.4 The Photographer reserves the right to use the Material, whether commercial, test or speculative (including images created for presentations, pitches or awards), for the purpose of promoting the Photographer's services, in any form and manner worldwide. This may include use of the Material in the context of the Advertiser's advertisement or other material in which it is incorporated, including without limitation the Advertiser's branding.

Unless otherwise agreed with the Client, the Photographer will not publish Material before the relevant project has been published by the Client or Advertiser, or until six months after completion of the Assignment, whichever occurs first. The Client may request that particular Material not be used for promotional purposes, or that its use be deferred. The Photographer will give reasonable consideration to such requests, and the Client's consent to a restriction on promotional use shall not be unreasonably withheld.

12. THIRD PARTY RIGHTS

12.1 Engagements of third-party suppliers, including models, are subject to such terms and conditions as those parties may require which shall be made available by the Photographer on request.

12.2 Estimated model fees cover modelling time only and the Client shall be responsible for clearing model usage unless otherwise stated on the Estimate.

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

12.4 The Photographer shall not be responsible for obtaining any clearances in respect of third-party copyright works, trademarks, 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.

13. CREDITS

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

The Client and Advertiser shall not knowingly remove or alter embedded copyright, creator or rights-management metadata, or attribute the images to another creator, except where technically unavoidable in the ordinary course of publication. They shall not knowingly replace removed metadata with inaccurate information or make or authorise a material alteration that falsely represents the Photographer's authorship or materially misrepresents the original image.

14. PAYMENTS

14.1 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.

14.2 All other invoices must be paid within 30 days of the date of issue. The 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.

14.3 If there is a delay of one month or more between agreed pre-production work and the shoot, the Photographer reserves the right to invoice the Client for the pre-production element of the Fee and for any expenses already incurred by the Photographer.

14.4 Usage Licence and any third-party fees negotiated by the Photographer are payable regardless of whether Licensed Images are in fact used by the Client or the Advertiser.

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

15. EXPENSES

15.1 All expenses figures provided in advance of a shoot are estimates only and the Client should allow a reasonable contingency budget, normally 10% where appropriate. All prices quoted by the Photographer are the total amounts payable. The Photographer is not VAT registered and does not charge VAT. Any VAT included in third-party supplier costs forms part of the expense charged and is not VAT charged by the Photographer.

15.2 The 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 realisation of the brief.

15.3

15.4 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 and additional fees at the Photographer's normal rate.

16. RETURN OF MATERIALS

16.1 Within 30 days of expiry of any Usage Licence, the Client and Advertiser shall cease use and return or delete copies of the Material held by them, except for copies they are required by law to retain or routine inaccessible back-ups that are not restored for use and remain subject to these Terms.

17. INDEMNITY

17.1 The Client shall indemnify the Photographer and keep him/her and their respective officers and employees indemnified on a continuing basis against all liabilities, claims, costs, damages and expenses claimed or incurred (including 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 the Client to obtain third party clearances or arising out of use of the Material by the Client or the Advertiser outside of the Usage Licence or otherwise as a result of any breach by the Client or the Advertiser of these terms.

18. EXTENT OF LIABILITY

18.1 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, Photographer's employees, agents or sub-contractors or otherwise) which arise out of or in connection with the shoot.

18.2 The Photographer's maximum aggregate liability for all losses, damages, costs, claims and expenses however or whenever arising out of or in connection with these Terms shall in any event be limited to the total amount of the fees paid to the Photographer in relation to the relevant Assignment.

18.3 Notwithstanding the above, nothing in these terms 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 to exclude.

18.4 The Photographer hereby disclaims 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.

19. CONFIDENTIALITY

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

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

19.3 The Photographer will not be liable for any breach of confidentiality by any third party.

20. TERMINATION

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

20.1.1 commits a material breach of these Terms and fails to remedy that breach (if remediable) within 30 days after receipt of written notice requesting its remedy; or

20.1.2 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.

21. EFFECTS OF TERMINATION

21.1 On termination or expiry of these Terms for whatever reason:

21.1.1 The Client shall pay all sums due and owing the date of which will be automatically accelerated to the date of termination.

21.1.2 The provisions of Clauses 2, 3.3, 8, 9, 10, 11, 12, 13, 16, 17, 18 and 19 shall survive expiry or termination.

21.2 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.

22. FORCE MAJEURE

22.1 The Photographer shall not 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.

23. ARTIFICIAL INTELLIGENCE

23.1 No rights other than those expressly specified in the Licence to Use are granted.

For the avoidance of doubt, no right is granted to the Client or Advertiser to reproduce, upload, input, use or otherwise make available the Licensed Images, Material or Working Files for training, fine-tuning, evaluation or development of machine-learning or artificial-intelligence systems, datasets or models, or to generate imagery or other outputs, including outputs intended to imitate the Photographer's style or genre, unless the Photographer gives specific express written permission. This restriction includes generative filling, image extension, synthetic replacement, creation of derivative imagery and other generative alterations.

Nor does the Client and/or Advertiser have the right to sub-license others to reproduce and/or otherwise use the Licensed Images and/or Material for AI training, dataset creation, generative image creation, synthetic replacement, image extension or other generative alteration, unless the Photographer has expressly authorised that use in writing.

Routine non-generative production processing for the licensed use, such as resizing, format conversion, ordinary cropping, colour correction and conventional retouching, is not prohibited by this clause provided it complies with clause 9.5 and does not involve model training, dataset contribution or generative creation or alteration.

The Client and Advertiser must not pass the Licensed Images, Material or Working Files to a third-party AI service or automated processing provider for a purpose prohibited by this clause. Any permission for AI or automated processing must identify the permitted provider, purpose, material and any applicable retention, training or onward-use conditions.

24. GENERAL

24.1 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.

24.2 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).

24.3 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 email, in which case it shall be deemed to have been received when transmitted, or, if this falls outside business hours in the place of receipt, when business hours resume.

24.4 Entire Agreement and Variation: These Terms and the accepted Estimate and Schedule constitute the agreement between the parties with respect to the Assignment, subject to any separately signed or accepted project-specific agreement. An Estimate or Schedule may vary these Terms only where the variation is identified and accepted in writing by both Parties. A separate NDA or confidentiality agreement governs confidentiality, disclosure, security and handling of confidential information to the extent of any conflict; these Terms and the accepted Estimate or Schedule govern fees, services, copyright and usage licensing unless the later agreement expressly states otherwise. Any project-specific restrictions on portfolio use, embargoes, archive retention or deletion, AI processing, exclusivity or liability must be recorded in the Estimate, Schedule or a separate written agreement accepted by both Parties.

24.5 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 Terms and the remainder shall continue to be valid and enforceable to the fullest extent permitted by law.

24.6 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 between the parties.

24.7 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.

24.8 Law and Jurisdiction: These Terms are governed by the laws of England & Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of England & Wales.

Source acknowledgement

These terms have been adapted from standard terms and conditions published by the Association of Photographers Ltd (AOP), with amendments for Nathaniel Davies Photography