

TERMS AND CONDITIONS FOR COMMISSIONED WORK

1. DEFINITIONS

For the purpose of this agreement the **'Client'** means the individual or company identified in the Licence to Use; the **'Company'** means Digital Photo Art Ltd, R/O c/o Bailey Oster Chartered Accountants, Mellor House, 65-81 St. Petersgate, Stockport SK1 1DS (Company No: 7304319) and shall where the context so admits include all their respective assignees, sub licensees and successors in title; the **'Commission Estimate'** means the company's pro forma document identifying charges and fees to be paid by the Client; the **'Photographer'** means the individual who created the Photographs and who is the owner of the copyright in the Photographs; the **'Photographs'** means all photographic material furnished by the Company, whether comprising transparencies, negatives, prints, digital files or any other type of physical or electronic material; the **'Licence to Use'** means the Company's pro forma licence.

2. COPYRIGHT

The Photographer retains the copyright in the Photographs at all times throughout the world. This can only be varied by written agreement of the Photographer. Acceptance of an official Purchase Order is not evidence of assignment of copyright by the Photographer. The Company has a licence granted by the photographer to sub-licence the Photographs to the Client in accordance with this agreement.

3. OWNERSHIP OF MATERIALS

Ownership in the materials used in the production of the Photographs remains the property of the Company. When the Licence to Use has expired the Photographs must be returned to the Company in good condition within 30 days of the expiration of the Licence to Use.

4. LICENCE TO USE

The Company licence the Client to use the Photographs for the period of time and on the other terms set out in the Licence to Use, the Commission Estimate and this agreement (the 'Licence to Use'). This Licence to Use comes into effect from the date of receipt of cleared funds in payment of the relevant invoice(s). No use may be made of the Photographs before payment in full of the relevant invoice(s) without the Company's express written permission. Any permission which may be given under the Licence to Use prior to full payment will automatically be revoked if full payment is not made by the due date or if the Client becomes insolvent, has a statutory demand served upon it, is put into receivership or liquidation or (if an individual) is made bankrupt. The Licence to the Photographs is only granted to the Client to use the Photographs for the purposes as stated in the Licence to Use and its benefit shall not be sub-licensed to any third party without the Company's permission. For the avoidance of doubt the Photographs may only be used by the Client (being and agency) for the use of advertisers whose details are expressly identified in the Licence to Use. Accordingly, even where any form of 'all media' Licence is granted, the Company's permission must be obtained before any use of the Photographs for other purposes (for example, use in relation to another product or service or sublicensing through a Photo-Library. 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, which must be mutually agreed (and paid in full) before such further use. It is the responsibility of the Client to ensure that a suitable additional Licence to Use is completed and provided by the Company. In the absence of any specific terms agreed the Company agrees to issue a 2-year non-exclusive Licence to Use in all territories and all media.

5. EXCLUSIVITY

Where an Exclusivity period is described in the Licence to Use and except as identified in this clause the Client is authorised to publish the Photographs to the exclusion of all other persons including the Company. However, the Company and the Photographer retains the right in all cases and without exception to use the Photographs in any manner at any time and in any part of the world for the purposes of advertising or otherwise promoting their own work. After the exclusivity period indicated in the Licence to Use has expired the Company shall be entitled to use the Photographs for any purpose. In the absence of any Exclusivity in the Photographs being granted to the Client in the Licence to Use, the Company and the Photographer shall be entitled to use the Photographs for any other purposes.

6. CLIENT CONFIDENTIALITY

The Company will keep confidential and will not disclose to any third parties or make use of material or information communicated in confidence for the purposes of the photography, save as may be reasonably necessary to enable the Company to carry out its obligations in relation to the commissioned photography. The Company will ensure that the Photographer enters into an obligation with it to comply.

7. INDEMNITY

The Company agrees to indemnify the Client against all expenses, damages, claims and legal costs arising out of failure by the Company to obtain any clearances for which it was responsible in respect of third party copyright works, trade marks, designs or other intellectual property. The Company shall only be responsible for obtaining such clearances if this has been expressly agreed in writing before the photography commences. In all other cases the Client shall be responsible for obtaining such clearances and will indemnify the Company against all expenses, damages, claims and legal costs arising out of a failure to obtain such clearances.

8. PAYMENT

Payment by the Client will be expected for the commissioned work within thirty (30) days of the issue of the relevant invoice(s) save in relation to any advance identified in the Commission Estimate, which is required in cleared funds prior to the commencement of any work by the Company or the Photographer. In the event of cancellation of the Commission prior to the commencement of the works by the Photographer the contingency fee identified in the Commission Estimate shall become payable immediately. Interest on late payments will be charged at the discretion of the Company at the rate of 2% per month or part thereof on all outstanding balances or (at its discretion) under the Commercial Debts Late Payment Regulations (as amended).

9. EXPENSES

Where extra expenses or time are incurred by the Company as a result of alterations to the original brief by the Client or otherwise at their request, the Client shall give approval to and be liable to pay such extra expenses or fees at the Company's normal rate in addition to the expenses already agreed or estimated.

10. REJECTION

Unless a rejection fee has been agreed in advance, there is no right to reject on the basis of style or composition.

11. CANCELLATION & POSTPONEMENT

A booking is considered firm from the date the Client signs the Commission Estimate and accordingly the Company will, at its discretion, charge a fee (the Contingency Fee) for cancellation or postponement.

12. RIGHT TO A CREDIT

The Photographer asserts her statutory right to be identified as the author of the Photographs in the circumstances set out in the sections 77-79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof.

13. FEES AND CHARGES

The Company will notify the Client of any increase in nominal fees thirty (30) days before such increases are effected. A normal working day shall be eight (8) hours in duration including a total of one (1) hour for lunch and other breaks. At the discretion of the Company any additional hours worked will be charged at the overtime rate, which is one and a half (1½) times the nominal rate.

13. ELECTRONIC STORAGE

Save for the purposes of production for the Licensed Use(s), the Photographs may not be stored in any form of electronic media without the written permission of the Company. Manipulation of the Photographs or use of only a portion of the Photograph may only take place with the permission of the Company.

14. APPLICABLE LAW

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

15. SUPPLY TO THIRD PARTIES

The rights given in this agreement only apply to the Client or named advertiser as stated in the License to Use.

16. ARCHIVING

The Company does not undertake to archive or store electronic images for any longer than six (6) months from the date of origination unless specific arrangements have been agreed for which a charge may be made.

1. VARIATION

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