

# TERMS AND CONDITIONS

## **1. DEFINITIONS**

For the purpose of this agreement 'the Agency' and 'the Advertiser' shall where the context so admits include their respective assignees, sub-licensees and successors in title. In cases where the Photographer's client is a direct client (i.e. with no agency or intermediary), all references in this agreement to both 'the Agency' and 'the Advertiser' shall be interpreted as references to the Photographer's client. 'Photographs' means all photographic material furnished by the Photographer, whether transparencies, negatives, prints or any other type of physical or electronic material.

## **2. COPYRIGHT**

The entire copyright in the Photographs is retained by the Photographer at all times throughout the world.

## **3. OWNERSHIP OF MATERIALS**

Title to all Photographs remains the property of the Photographer. When the Licence to Use the material has expired the Photographs must be returned to the Photographer in good condition within 30 days.

## **4. USE**

The Licence to Use comes into effect from the date of 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 Photographer's express permission. Any permission which may be given for prior use will automatically be revoked if full payment is not made by the due date or if the Agency is put into receivership or liquidation. The Licence only applies to the advertiser and product as stated on the front of the form and its benefit shall not be assigned to any third party without the Photographer's 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 eg use in relation to another product or sublicensing through a photolibrary. Permission to use the Photographs for purposes outside the terms of the Licence will normally be granted upon payment of a further fee, which must be mutually agreed (and paid in full) before such further use. Unless otherwise agreed in writing, all further Licences in respect of the Photographs will be subject to these terms and conditions.

## **5. EXCLUSIVITY**

The Agency and Advertiser 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 purposes of advertising or otherwise promoting his/her work. After the exclusivity period indicated in the Licence to Use the Photographer shall be entitled 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 agrees to indemnify the Agency and the Advertiser against all expenses, damages, claims and legal costs arising out of any failure by the Photographer to obtain any clearances for which he/she was responsible in respect of third party copyright works, trade marks, designs or other intellectual property. The Photographer shall only be responsible for obtaining such clearances if this has been expressly agreed before the shoot. In all other cases the Agency shall be responsible for obtaining such clearances 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 Agency will be 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 Debt (Interest) Act 1998 from the date payment was due until the date payment is made.

## **9. EXPENSES**

Where extra expenses or time are incurred by the Photographer as a result of alterations to the original brief by the Agency or the Advertiser, or otherwise at their request, the Agency shall give approval to and be liable to pay such extra expenses or fees at the Photographer's normal rate to the Photographer in addition to the expenses shown overleaf as having been 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 as from the date of confirmation and accordingly the Photographer will, at his/her discretion, charge a fee for cancellation or postponement.

## **12. RIGHT TO A CREDIT**

If the box on the estimate and the licence marked 'Right to a Credit' has been ticked the Photographer's name will be printed on or in reasonable proximity to all published reproductions of the Photograph(s). By ticking the box overleaf the Photographer also asserts his/her statutory right to be identified in the circumstances set out in Sections 77-79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof.

## **13. 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 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.

## **14. APPLICABLE LAW**

This agreement shall be governed by the laws of England, Wales and Scotland.

## **15. VARIATION**

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

**NOTE:** For more information on the commissioning of advertising photography refer to the interim guidelines produced by the Association of Photographers.