

Standard Photographic Terms & Conditions of Engagement

1. INSTRUCTIONS MUST BE IN WRITING

1.1 The Client must ensure that all instructions and expectations regarding the Booking/Order (and any subsequent variations) are agreed in writing.

2. LICENCE GRANTED TO CLIENT

2.1 Except as may be expressly provided in the Agreement, the copyright in all Photographic Works resulting from the Booking/Order remains the property of the Photographer. The Photographer does not accept commissions to create Photographic Works. These terms override section 21 (3) of the Copyright Act 1994.

2.2 The Photographer grants the Client a non-exclusive Licence to use those parts of the Photographic Works selected by the Photographer and presented to the Client. The Licence includes the right (if any) to reproduce and publish the Photographic Works for the purposes, territories and time periods specified in the Booking/Order, subject to these terms and conditions.

The Client shall have the right to seek further Licences for use or reuse of any Photographic Works, which shall not be unreasonably refused by the Photographer but is subject to agreement of a reasonable fee for that Licence.

2.3 If the Photographic Works have been produced for an Advertiser named in the Agreement, the Photographic Works may only be used by the Advertiser. The Client must ensure that the Advertiser complies with the Client's obligations and all other terms and conditions of the Agreement.

2.4 The Client acknowledges that the Photographer always retains the right to use the Photographic Works in any manner at any time and in any part of the world for the purposes of:

- a Entering the Photographic Works into photographic competitions or awards and for their use in any material published in connection with promoting those competitions or awards; and
- b Advertising or otherwise promoting the Photographer's Work, including through the use of social media; and
- c Submitting the Photographic Works for display in art galleries or other premises; and
- d Using the Photographic Works for any other purpose within the Photographer's business activities.

3. CONDITIONS OF LICENCE

3.1 This Licence to use, and the right to use the Photographic Works commences from the date of full payment of all amounts owed to the Photographer in relation to the Photographic Works and the Agreement, except where the Photographer gives express written permission.

3.2 This Licence must not be assigned to any third party without the Photographer's prior written permission (which shall not be unreasonably refused), but may be sublicensed by the Client to the Advertiser named in the Agreement (if any) on the same terms and conditions of this Licence (excluding any further right to sublicense).

3.3 The Client is entitled to:

- a Manipulate, distort or make other alterations to the Photographic Works (including overprinting by text or other Photographic Works), unless this right is expressly excluded in the Agreement; and
- b Use only a portion of the Photographic Works.

3.4 Copyright in any new Photographic Works created from any manipulation, alteration, distortion or overprinting of text of the licensed Photographic Works shall remain with the Photographer and shall be licensed to the Client on the same terms and conditions of the Agreement.

3.5 Any breach of the Agreement by the Client (or by the Advertiser, with the Client's knowledge) which results in damage to the professional reputation of the Photographer, entitles the Photographer to compensation from the Client for that damage in addition to any other remedies available to the Photographer.

4. ASSIGNMENT OF COPYRIGHT

4.1 Where the Agreement specifies that copyright in the Photographic Works is assigned to the Client in consideration for the Client's payment for those Works:

- a The Photographer assigns to the Client copyright in the Photographic Works from the date of full payment of all amounts owed to the Photographer in relation to the Photographic Works and the Agreement;
- b It is the responsibility of the Client to obtain all model releases, moral right waivers and privacy waivers necessary for the use of the Photographic Works;
- c The Client agrees to indemnify the Photographer in respect of any loss, claims, damages or expenses (including costs incurred on a solicitor-client basis) incurred by the Photographer arising from any use of the Photographic Works; and
- d The Photographer retains the rights described in clause 2.4 and clause 5 of these terms and conditions.

5. MORAL RIGHTS

5.1 The Photographer asserts moral rights, including attribution rights, in respect of the Photographic Works (unless expressly waived in the Agreement in writing). Each use of any Photographic Work by the Client, including where the Client publishes or otherwise uses the Photographic Works on social media, must be accompanied by an adjacent credit line acknowledging the Photographer's name and copyright in the Photographic Works in the form specified in the Agreement, or if not so specified, then in a form approved in writing by the Photographer.

5.2 If the Client fails (for whatever reason) to provide the attribution described in clause 5.1, then in addition to all other rights under the Agreement or at law, the Client shall be liable to pay a non-attribution fee calculated at 200% of the Photographer's fee, which the Client acknowledges and agrees to be a fair and reasonable pre-estimate of the loss suffered by the Photographer.

6. DATA PRESERVATION

6.1 The Client's right to use the Photographic Works under the Licence does not include the right to remove, alter or otherwise affect any rights information accompanying or relating to the Photographic Works, including (without limitation) any notices or metadata accompanying or part of the Photographic Works recording creator details, copyright ownership or publication status of the Photographic Works. The Client shall not alter or remove any notices attached to the Photographic Works and shall take all reasonable steps to respect and preserve the Photographer's copyright and other rights. Where the Photographer has placed restrictions on access to or use of the Photographic Works, the Client shall not defeat (or attempt to defeat) such restrictions.

7. STORAGE AND BACKUPS

7.1 The Client acknowledges that the Client is responsible for the storage and backup of the Photographic Works supplied by the Photographer. While the Photographer will follow its usual backup procedures (if any) upon delivery of the Photographic Works, the Photographer shall not be liable under any circumstances if unable to produce backups or future reproductions of the Photographic Works upon the request of the Client. Where backups are available, these may be made available to the Client for a fee.

8. PRIVACY AND PERSONAL INFORMATION

8.1 As part of creating the Photographic Works, the Photographer may collect and retain personal information about the Client. The personal information may be used by the Photographer for communicating with the Client for any purpose relating to the Photographic Works (including arranging third party services), direct marketing and in connection with these terms and conditions.

8.2 The Client authorizes the Photographer to collect, retain, use personal information for these purposes (including assessing credit worthiness), and to disclose that information to any person or entity for these purposes.

8.3 Personal information collected by the Photographer shall be retained in the Photographer's database. The Client may access and request correction of any of the Client's personal information by contacting the Photographer.

8.4 Where section 105 of the Copyright Act 1994 applies, the Photographer shall obtain any necessary consent in accordance with section 107 of that Act, provided however that the Client agrees that the Photographer has the rights described in clause 2.4 unless those rights are expressly excluded in the Booking/Order.

9. PAYMENT

9.1 The Client shall pay the Photographer the various amounts payable in accordance with the Booking/Order and the Agreement. If the Photographer's fee and expenses are not estimated in advance, or for any goods or services different or additional to the Booking/Order, then the Client shall pay the amount invoiced by the Photographer in accordance with the Photographer's Price List. The Photographer may require a deposit or payment of part or all of the amounts due in advance. Unless otherwise specified in the Agreement, payment of all other amounts are due within 7 days of invoice.

10. JOB-RELATED COSTS

10.1 The Client shall reimburse the Photographer for all Job-Related Costs.

Where the Photographer makes payment to others on behalf of the Client, the Photographer may add a service charge or commission, determined at the Photographer's absolute discretion. Unless otherwise specified in the Agreement, the Client must pay all Job-Related Costs and service charges/commissions to the Photographer within 7 days of invoice. The Client is not entitled to any property in:

- a Any artistic works or other materials created or supplied by the Photographer to support the Photographic Works; or
- b Any materials used for the creation of an artistic work, which are commissioned or arranged by the Photographer; or
- c Any goods used in supporting the Photographic Works

10.2 Such goods, materials, authored or artistic works shall remain the property of the Photographer, unless otherwise specified in the Agreement.

11. URGENT WORK

11.1 Where the Client requires Photographic Works on an urgent basis (which includes where the Photographer is unable to re-shoot or correct a shot because of an urgent deadline) the Photographer will not be liable for any losses or damages arising out of the inability to carry out a re-shoot or the costs of arranging a re-shoot.

12. CHANGES TO THE ESTIMATE

12.1 Estimates of fees and Job-Related Costs are estimates and not firm quotations and are liable to alteration. The Photographer must bring any increase to the estimate, of 10% or more, to the attention of the Client. Any change to the job specifications made or agreed by the Client may alter the fees and Job-Related Costs.

13. OVERDUE PAYMENTS

13.1 In the event that any monies are not paid in full on the due date, the Photographer shall be entitled to:

- a Charge interest at a rate of 2.5% per month or part month overdue on any amounts outstanding;
- b Recover any debt collection costs and related legal expenses (on a solicitor-client basis); and
- c Suspend any further work until all amounts owing and any costs incurred are paid in full.

14. CANCELLATION

14.1 When a Booking/Order is confirmed by the Client, the Client becomes liable for payment to the Photographer and the Photographer becomes liable to complete the shoot.

14.2 Cancellation of the Booking/Order by the Client must be in writing and must give reasonable notice to the Photographer. Subject to any specific terms in the Agreement, if the Client cancels the Booking/Order:

- a Within 1 working day of the booked shoot day, the Client must pay a fee of 100% of the Photographer's fees
- b Giving notice of cancellation of greater than 1 working day and within 3 working days of the booked shoot day, the Client must pay a fee of 50% of the Photographer's fees.
- c Giving notice of cancellation of greater than 3 working days and within 1 week of the booked shoot day, the Client must pay a fee of 25% of the Photographer's fees.
- d The Client must pay the Photographer for all Job-Related Costs incurred.

14.3 The Client acknowledges and agrees that these cancellation fees fairly reflect the loss suffered by the Photographer and the Photographer's ability to re-schedule work and re-allocate resources, depending upon the amount of notice given.

15. POSTPONEMENT

15.1 Subject to any specific terms in the Agreement, if the Client postpones or changes the date of the Booking/Order, the following shall apply:

Standard Photographic Terms & Conditions of Engagement

- a Within 1 working day of the booked shoot day, the Client must pay a fee of 50% of the Photographer's daily fee for each day which is postponed.
b With more than 1 working days' notice, the Client must pay a fee of 25% of the Photographer's daily fee for each day which is postponed.
c The Client must pay the Photographer for all Job-Related Costs incurred.
- 15.2 The Client acknowledges and agrees that these cancellation fees fairly reflect the loss suffered by the Photographer and the Photographer's ability to re-schedule work and re-allocate resources, depending upon the amount of notice given.
- 16. WEATHER CONDITIONS**
- 16.1 A weather-permitting booking must be agreed between the Client and Photographer prior to the shoot. Upon postponement or cancellation of a shoot due to bad weather the Client must pay the Photographer all Job-Related Costs incurred up until the time that the shoot was postponed and 50% of the Photographer's fee which was to be charged for the shoot. The Client is responsible for taking out weather insurance.
- 17. WORK SUSPENDED ON CLIENT'S INSTRUCTIONS**
- 17.1 Where the Client instructs that work is to be suspended for a period of 30 days or more, the Client must, at the time of suspension, pay the Photographer for all work in progress and any Job-Related Costs incurred at that time.
- 18. RESPONSIBILITY FOR CONTRACTORS**
- 18.1 The Client is responsible for making all payments (including rollover fees) and fulfilling all other obligations to contractors.
18.2 Where contractors are models, the Client is responsible for obtaining all necessary model releases. To ensure proper recording of others' intellectual property rights, which may be part of the Photographic Works, the Client shall, on a request by the Photographer, provide evidence of these model releases to the Photographer.
18.3 Where the Client requests the Photographer to engage contractors, the Photographer shall do so as agent for the Client and the Client indemnifies the Photographer against all costs, disbursements and other obligations arising from that agency.
- 19. CLIENT PROPERTY AND MATERIALS**
- 19.1 Client property and all property and material supplied to the Photographer by or on behalf of the Client is held at the Client's risk and the Photographer accepts no responsibility for the maintenance or insurance of that property or material.
19.2 The Client must pay any sum charged or incurred by the Photographer for handling or storing property or material supplied by or on behalf of the Client.
19.3 Where property and materials are left with the Photographer without specific instructions, the Photographer may dispose of them at the end of six months from the date of receiving them and retain the proceeds.
- 20. CLIENT CONFIDENTIALITY**
- 20.1 The Client must advise the Photographer as to whether any material or information supplied is of a confidential nature. The Photographer will keep that material or information confidential, except where disclosure is reasonably necessary to enable the Photographer to perform the Agreement.
- 21. INDEMNITY**
- 21.1 The Client undertakes to indemnify the Photographer for any loss, claim, damage, or expense (including costs incurred on a solicitor client basis) suffered or incurred as a result of:
a Any breach by the Client of the Agreement;
b Any illegal or defamatory Photographic Works produced for the Client;
c Any infringement of an intellectual property right of any person; or
d In recovering any moneys due.
21.2 Such loss, claim, damage or expense shall be moneys due for the purposes of these terms and conditions.
21.3 The Client is responsible for obtaining any authorisation, clearance, licence or other form of approval necessary for the lawful use of third party intellectual property works.
- 22. COLOUR VARIATION**
- 22.1 The Client releases the Photographer from any and all liability relating to colour reproduction of supplied works on any system not under the direct control of the Photographer. Where the Photographer supplies the Client with photographic prints, the Client acknowledges that Photographic Works may fade or discolour over time due to the inherent qualities of materials used, and releases the Photographer from any liability for any claim based upon fading or discolouration. Where a colour is unable to be reproduced accurately due to limitations in capture and output technology, the Client releases the Photographer from any and all liability in regard to colour reproduction.
- 23. QUALITY OF PHOTOGRAPHIC WORKS**
- 23.1 Where Photographic Works are not of an acceptable technical quality, making it unfit for the purpose of its specified use, then no fee or Job-Related Costs are due to the Photographer. The Photographer has the right to rectify the defect within a reasonable time, having regard to the urgency of the work. If rectified, the Photographer is entitled to be paid the full fee and Job-Related Costs, but may not charge the Client any extra fee or cost for rectifying the defect.
23.2 Where there is a representative of the Client at the shoot, the representative is responsible for the direction of the work. Acceptance of the work by this representative is confirmation that the Photographer has satisfied the artistic quality and interpretation requirements of the shoot. If the representative is not at the shoot then the Photographer's judgement is absolute within the limits (if any) imposed by any documented agreements on the nature of the intended work.
23.3 If the Photographer produces Photographic Works that are in the same style and structure as the Photographer's past work (by reference to the Photographer's portfolio), the Client is deemed to have accepted the Photographer's artistic interpretation.
23.4 If there is a dispute as to artistic interpretation, which is unresolved after good faith discussions between the Photographer and the Client, and where the Photographer is a member of a recognised photographic association or society, the chief executive (or equivalent) of that association or society shall determine the dispute. That decision shall be final and binding.
- 24. CONSUMER GUARANTEES ACT 1993**
- 24.1 The Consumer Guarantees Act 1993 may apply to the Photographic Works provided by the Photographer, if the Client acquires those Photographic Works for personal, domestic or household use or consumption. If this Act applies, nothing in the Agreement will limit or exclude the Client's rights under this Act.
24.2 If the Client is acquiring the Photographic Works for business or trade purposes, then the Client's rights are subject to the Agreement only and the Consumer Guarantees Act 1993 shall not apply.
- 25. PHOTOGRAPHER NOT LIABLE FOR LOSSES**
- 25.1 Except as provided by the Consumer Guarantees Act 1993, the Photographer shall not be liable for:
a Any loss or damage arising by reason of any delay in the completion of the Photographic Works; or
b Any loss of profits or revenues; or
c Any indirect or consequential loss of whatever nature; or
d Any loss resulting from any errors or omissions arising from an oversight or a misinterpretation of a Client's verbal instructions.
- 26. LIABILITY OF PHOTOGRAPHER LIMITED**
- 26.1 Subject to clause 24, the Photographer's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or connected with the performance or failure of performance of any Photographic Works or photographic services supplied by the Photographer, shall not exceed the full value of the payments made by the Client under the Agreement.
- 27. HEALTH AND SAFETY**
- 27.1 The Client acknowledges and agrees that the Client is responsible for, and shall take all reasonably necessary steps to ensure, its own personal safety and that no action or inaction of the Client causes harm or risk to the health and safety of others. Notwithstanding the above, the Client agrees to comply with any reasonable health and safety directions given by the Photographer.
- 28. FORCE MAJEURE**
- 28.1 Except for an obligation to pay money, neither the Client nor the Photographer shall be liable for any act, omission or failure to fulfil its obligations, or any loss or damage arising directly or indirectly due to an act of God, explosion, fire, flood, storm, earthquake, subsidence, armed conflict, strike, lockout or labour disputes, civil commotion, intervention of a government, accidents, electrical, heat, light or telecommunication failures, interruption to transportation, weather or any other cause outside the Photographer's control.
- 29. DISPUTE RESOLUTION**
- 29.1 The Photographer and the Client agree to use their best efforts to resolve any dispute which arises through good faith negotiations.
29.2 Either party may raise a dispute by written notice to the other party. Within 3 working days of receipt of a dispute notice, the parties shall meet (or otherwise communicate if meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis.
29.3 Neither party may commence any litigation in relation to the dispute unless 14 days have passed since the parties met (or otherwise communicated) and endeavoured in good faith to resolve the dispute on mutually acceptable terms.
- 30. CONFLICTS**
- 30.1 In the event of a conflict or inconsistency between these terms and conditions and the Booking/Order, the Booking/Order shall prevail.
- 31. GOVERNING LAW**
- 31.1 These terms and conditions are governed by, and to be construed in accordance with New Zealand Law. The Client irrevocably submits to the exclusive jurisdiction of the New Zealand courts.
- 32. ENTIRE AGREEMENT**
- 32.1 The Booking/Order, together with these standard terms and conditions and any other special conditions agreed in writing between the parties, shall constitute the entire Agreement between the parties.
32.2 Each Booking/Order made by the Client shall (together with these standard terms and conditions and any other special conditions agreed in writing between the parties) constitute a separate Agreement between the parties.
- DEFINITIONS**
- For the purposes of the Agreement, the following definitions shall apply unless the context requires otherwise:
Advertiser: means the end user of the Photographic Works where the Photographer is engaged to produce the Photographic Works by an advertising agency, design firm, or other intermediary.
Agreement: means the Booking/Order, together with these standard terms and conditions and any other special conditions agreed in writing between the parties.
Booking/Order: means an order or request by the Client for the production, supply or viewing of Photographic Works, including (without limitation) bookings, orders, quotes, estimates, proposals, and appointments made for a shoot, sitting or viewing.
Client: means the person or entity listed on the Booking/Order who engages or instructs the Photographer to produce Photographic Works.
Job-Related Costs: means any costs and expenses incurred by the Photographer on the Client's behalf in providing photographic services or in the creation of the Photographic Works.
Licence: is a right granted by the Photographer to the Client to use the copyright works of the Photographer on the terms set out above.
Photographic Works: means the deliverable works specified in the Booking/Order and created or supplied by the Photographer, including photographs, photographic prints, moving images (video), transparencies, negatives, digital files, and images in any form or medium.
Photographer: means the photographer and where the context requires may include, the studio, photographic company, employees or sub-contractors.
Price List: means the Photographer's list or schedule of prices for goods and services at the date of the Agreement.