

Photography Terms and Conditions

DEFINITIONS

(a) For the purpose of this agreement “the Agency” and “the Client” shall where the context so admits include their respective assignees, sub-licensees and successor 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 Client” shall be interpreted as references to the Photographer’s Client. (b) For the purpose of this agreement “The Photographer” will mean the Author of the Photograph James Kirby. And shall where the context so admits include their respective assignees, sub-licensees and successor in title. (c) “Photographs” and “Works” means all photographic material furnished by the Photographer, whether prints, digital files or any other type of physical or electronic material in existence. (d) All contracts verbal or written are only accepted on the basis that the Terms and Conditions of the Photographer are the only ones applicable. (e) Other Terms and Conditions proffered by the Client are specifically excluded unless agreed in writing beforehand by the Photographer. (f) Where time is of the essence the Photographer entirely at its own discretion may accept an instruction given orally, in this event the Photographer shall accept no liability for any error in executing the order. (g) Unless the Photographer is given prior written notice by the Client, the person placing or signing the order on behalf of the Client is deemed to be authorised to do so. (h) When a Client’s policy is not to rely on email confirmations, hardcopy paperwork must be supplied, if none is provided, then the email traffic will constitute a contract in law.

COPYRIGHT

(a) The Author retains the entire copyright in the Photographs and Works at all times, throughout the World and (b) Where reproduction of Works has taken place and settlement has not been made, the Photographer will make such charges to the publisher of those images as falls within the Copyright, Designs and Patents Act 1988.

OWNERSHIP OF MATERIALS

(a) Title to all Photographs remains the property of the Photographer. (b) When the License to Use has expired the Photographs must be returned to the Photographer in good condition within 30 days and any archived digital files destroyed. (c) Title to any materials used in producing the Works is not transferred to the Client upon payment of the invoice.

USE

(a) The License to Use comes into effect from the date of payment of the relevant invoice(s). (b) No use may be made of the Photographs before payment in full of the relevant invoice(s) without the Photographer’s express permission in writing. (c) Any permission that 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. (d) Where restricted in the Agreement, permission to

use the Photographs for other purposes will normally be granted upon payment of a further fee to be mutually agreed. Note: A written agreement must be reached with the Photographer before the Photographs may be used for other purposes. Where uses of an image are made which breach the licence to use further charges will be made. (e) Any reproduction rights granted are by way of licence only and no partial or other assignment of copyright shall be implied. (f) On the Client's death or bankruptcy or (if the Client is a Company) in the event of a Resolution, Petition or Order for winding-up being made against it, or if a Receiver or an administration is appointed, any licence granted shall immediately cease.

EXCLUSIVITY

(a) Unless agreed to in writing on the License to Use and the Invoice no exclusivity is given or implied to The Agency and/or The Client. (b) The Photographer retains the right in all cases to use or sell the Photographs. (c) Exclusivity will not be unreasonably withheld but only on written agreement with the Photographer before work commences.

CLIENT CONFIDENTIALITY

The Photographer will keep confidential and will not disclose to any third parties or make use of 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.

INDEMNITY

(a) It is the Client who must satisfy himself/herself/It's self that all necessary rights, model releases, clearances or consents which may be required for reproduction of people, places or items depicted within any Works are obtained. (b) It is acknowledged that the Photographer gives no warranty or undertaking that any such rights, releases or consents are or will be obtained whether in relation to the use of names, people, trade marks, registered or copyright designs or Works of art depicted in any picture. (c) The Photographer shall only be responsible for obtaining such clearances if this has been expressly agreed in writing before the shoot. (d) In all other cases the Client shall indemnify the Photographer against all expenses, damages, claims and legal costs arising out of any failure to obtain such clearances. (e) The Photographer will not be liable for any loss or damage, for any consequential loss of profit or income however caused including negligence by the Photographer, James Kirby or agents or otherwise, and it is the Client's responsibility to insure against such loss or damage.

PAYMENT

(a) Payment by the Client will be strictly within 30 days of the issue of the relevant invoice for the commissioned work. (b) If payment is not received within 30 days LATE PAYMENT OF COMMERCIAL DEBTS (INTEREST) ACT 1998 may be enforced. (c) Where a Client is a company and whether or not that company has gone into liquidation the individual directors will be responsible for

all outstanding fees and costs in relation to the contract.

EXPENSES

Where extra expenses or times are incurred by the Photographer as a result of alterations to the original brief by the Client, or otherwise. The Client shall give approval to and be liable to such extra expenses or fees, in addition to the fees and expenses shown on the Estimate as having been agreed or estimated.

REJECTION

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

CANCELLATION & POSTPONEMENT

A booking is considered firm as from the date of confirmation and accordingly the Photographer will, at his discretion, charge a fee of cancellation or postponement if less than 48 hours notice is given.

FORCE MAJEURE OR ACT OF GOD

The due performance a booking is subject to alteration or cancellation by either party owing to any cause beyond their control.

EVENT ARRANGEMENTS

The Client shall notify the Photographer of any changes to these details. The Photographer cannot be held liable for delays or disruption in their delivery of the service until any changes are received and acknowledged.

RIGHT TO A CREDIT

The Licence to Use requires that the Photographer's name 'James Kirby' will be printed on or in reasonable proximity to all published reproductions of the Photograph(s). The Photographer also asserts his statutory and moral 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.

SUPPLY TO THIRD PARTIES

The licence only applies to the Client and product stated on the Licence to Use.

ELECTRONIC STORAGE

(a) Save for the purposes of production for the licensed use(s), the Photographs may not be stored or archived in any form without the written permission of the Photographer. (b) Digital Data is stored by the Photographer on the understanding that the Photographer is not responsible for the future integrity

of that data, or of any failure to retrieve data from the Photographer's archive.

APPLICABLE LAW

This agreement shall be governed by the Laws of England & Wales.

VARIATION

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