

TERMS & CONDITIONS

Simon Harvey photographer / Simon Harvey Photography Ltd
Commercial photography terms of business

1. 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 or Andrew Hendry Photographer. 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 transparencies, negatives, prints, digital files or any other type of physical or electronic material in existence now or yet to be developed. (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.

2. COPYRIGHT

(a) The Author always retains the entire copyright in the Photographs and Works, 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. Once payment has been received the client is permitted to full unrestricted access and usage of the image.

3. 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, however once payment has been received the client is permitted to full unrestricted access and usage of the image.

4. 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.

5. 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.

6. CLIENT CONFIDENTIALITY

(a) 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.

7. 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, trademarks, 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, Andrew Hendry their employees or agents or otherwise, and it is the Client's responsibility to insure against such loss or damage.

8. PAYMENT

(a) Payment due date will be clearly noted on the relevant invoice for the commissioned work. (b) Thereafter, further charges may be made for any additional statement, letter (whether as an email, fax, etc) issued for the recovery of the outstanding debt of not less than £15.50 plus VAT each and all other costs for the recovery of debts including bank charges. (c) A further charge of 5% over the Barclays Bank rate is added to the invoice on the first day following that when settlement should have been made and will be subsequently added and accrue at the weekly anniversary of the due date. LATE PAYMENT OF COMMERCIAL DEBTS (INTEREST) ACT 1998 will be enforced. (d) 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.

9. EXPENSES

(a) 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.

10. REJECTION

(a) Unless a rejection fee has been agreed in advance, there is no right to reject based on style or composition.

11. CANCELLATION & POSTPONEMENT

(a) A booking is considered firm as from the date of confirmation and accordingly the Photographer will, at his/her discretion, charge a fee of cancellation or postponement. When a booking is confirmed, if it is subsequently cancelled, a cancellation fee will be charged to the client according to the following schedule: (i) When a client cancels photography within less than 7 days business of any confirmed date, a fee of 20% of the booked time rate will be charged. (ii) When a client cancels photography within less than 24 hours of any confirmed date/time, a fee of 90% of the booked time rate will be charged. (iii) When a client cancels photography on the day of the confirmed date, the full fee will be charged. When a booking is confirmed, if it is subsequently postponed, the Photographer will at his discretion charge a fee for

postponement. In addition, the client may be charged for any expenses incurred by The Photographer as a result of cancellation or postponement.

12. Cancellation by the Photographer

The Photographer will endeavour to put the Client in touch with another photographer in the event The Photographer is unable to attend on booked date due to any cause beyond their reasonable control e.g., sudden illness, injury, victim of crime, flooding etc. In the event of such cancellation by The Photographer, or in the very unlikely event of total photographic failure, liability shall be limited to a full refund of any fees paid to the Photographer by the Client at that time.

13. RIGHT TO A CREDIT

(a) The Licence to Use requires that the Photographer's name 'Andrew Hendry' will be printed on or in reasonable proximity to all published reproductions of the Photograph(s). The Photographer also asserts his/her 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.

14. SUPPLY TO THIRD PARTIES

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

15. 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) Manipulation of the image or use of only a portion of the image may only take place with the written permission of the Photographer. (c) 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.

16. APPLICABLE LAW

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

17. VARIATION

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

