

# 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.
- License:** 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.