

TERMS AND CONDITIONS OF BUSINESS

1. DEFINITION

For the purpose of this Agreement: **'the Client'** means the individual or company identified in the Licence to Use; **'the Company'** means Nick Dunmur Limited, R/O 19 Forest Street, Kirkby in Ashfield, Nottingham NG17 7DT (Company no.04695800) and shall where the context so admits include all their respective assignees, sub-licensees and successors in title; **'the Commission Estimate'** means the Company's pro-forma document identifying charges and fees to be paid by the Client; **'Photographer'** means the individual who created the Photographs and who is the owner of the copyright in the Photographs; **'Photographs'** means all photographic material furnished by the Company, whether comprising transparencies, negatives, prints, digital files or any other type of physical and electronic material; **'Licence to Use'** means the Company's pro-forma licence.

2. COPYRIGHT

The copyright in the Photographs is retained by the Photographer at all times throughout the world. This can only be varied by the written agreement of the Photographer. Acceptance of an official Purchase Order is not evidence of assignment of copyright by the Photographer. The Company has a licence granted by the Photographer to sub-licence the Photographs to the Client in accordance with this agreement.

3. OWNERSHIP OF MATERIALS

Ownership in the materials used in the production of the Photographs remains the property of the Company. When the Licence to Use has expired the Photographs must be returned to the Company in good condition within thirty days of the expiration of the Licence to Use.

4. LICENCE TO USE

The Company licences the Client to use the Photographs for the period of time and on the other terms set out in the Licence to Use, the Commission Estimate and this agreement ("the Licence to Use"). This Licence to Use comes into effect from the date of receipt of cleared funds in 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 Company's express written permission.

Any permission which may be given under the Licence for Use prior to full payment will automatically be revoked if full payment is not made by the due date or if the Client becomes insolvent, has a statutory demand served upon it, is put into receivership or liquidation, or (if an individual) is made bankrupt.

The licence to the Photographs is only granted to the Client to use the Photographs for the purposes as stated in the Licence to Use and its benefit shall not be sub-licensed to any third party without the Company's permission. For the avoidance of doubt the Photographs may only be used by the Client (being an agency) for the use of advertisers whose details are expressly identified in the Licence to Use. Accordingly even where any form of 'all media' licence is granted the Company's written permission must be obtained before any use of the Photographs for other purposes (for example, use in relation to another product or service or sub-licensing through a Photo-Library). Permission to use the Photographs for purposes outside the terms of the Licence to Use will normally be granted upon payment of a further fee which must be agreed in writing before such further use. It is the responsibility of the Client to ensure that a suitable additional Licence to Use is completed and provided by the Company.

5. EXCLUSIVITY

Except as identified in this clause the Client is authorised to publish the Photographs to the exclusion of all other persons including the Company. However the Company and the Photographer retains the right in all cases and without exception 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 their own work. After the exclusivity period indicated in the Licence to Use has expired the Company shall be entitled to use the Photographs for any purpose.

6. CLIENT CONFIDENTIALITY

The Company will keep confidential and will not disclose to any third parties or make use of material or information communicated to him in confidence for the purposes of photography save as may be necessary to enable the Company to carry out its obligations in relation to the commissioned photography. The Company will ensure that the Photographer enters into an obligation with it to comply.

7. INDEMNITY

The Company agrees to indemnify the Client against all expenses, damages, claims and legal costs arising out of a failure by the Company to obtain any clearances for which it was responsible in respect of third party copyright works, trade marks, designs or other intellectual property. The Company shall only be responsible for obtaining such clearances if this has been expressly agreed in writing before the photography commences. In all other cases the Client shall be responsible for obtaining such clearances and will indemnify the Company against all expenses, damages, claims and legal costs arising out of a failure to obtain such clearances.

8. PAYMENT

Payment by the Client will be made for the commissioned work within fourteen (14) days of the issue of the relevant invoice(s) save in relation to any advance identified in the Commission Estimate which is required in cleared funds prior the commencement of any work by the Company or the Photographer. In the event of cancellation of the commission prior to the commencement of the works by the Photographer the contingency fee identified in the Commission Estimate shall be become payable immediately. Interest on late payments will be charged at the discretion of the Company at the rate of 2% per month or part thereof on all outstanding balances or (at its discretion) under the Commercial Debts Late Payment Regulations (as amended).

9. EXPENSES

Where extra expenses of time are incurred by the Company as a result of alterations to the original brief by the Client or otherwise at their request the Client shall give approval to and be liable to pay for such extra expenses or fees at the Company's normal rate in addition to the expenses already 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 AND POSTPONEMENT

A booking is considered made as from the date of signing of the Commission Estimate by the Client and accordingly the Company will at its discretion charge a fee (the contingency fee) for cancellation or postponement.

12. RIGHT TO A CREDIT

The Photographer asserts his statutory right to be identified as the author of the Photographs 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. FEES AND CHARGES

The Company will notify the Client of any increase in nominal fees thirty days before such increases are effected. A normal working day shall be eight hours in duration including a total of one hour for lunch or other breaks. At the discretion of the Company any additional hours worked will be charged at the overtime rate which is one and a half times the nominal rate.

14. ELECTRONIC STORAGE

Save for the purposes of production for the Licensed Use(s) the Photographs may not be stored in any form of electronic media without written permission of the Company. Manipulation of the Photographs or use of only a portion of the Photographs may take place only with permission of the Company.

15. APPLICABLE LAW

This Agreement shall be governed by the Laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

16. SUPPLY TO THIRD PARTIES

The rights given in this agreement only apply to the Client or named advertiser Licence to Use Licence to Use as stated in the Licence to Use.

17. ARCHIVING

The Company does not undertake to archive or store electronic images for any period longer than six months from the date of origination unless specific arrangements have been agreed for which a charge may be made.

18. VARIATION

These Terms and Conditions shall not be varied except by agreement in writing. These Terms and Conditions replace any previously issued by the Company.