

STANDARD PHOTOGRAPHIC TERMS AND CONDITIONS OF ENGAGEMENT APPROVED BY THE HONG KONG INSTITUTE OF PROFESSIONAL PHOTOGRAPHERS LTD.

Subject to this standard photographic terms and conditions of engagement (“**Terms & Conditions**”) and that of the Standard Photographic Licence and Engagement Confirmation attached (“**Confirmation**”), the Photographer grants to the Client a licence (“**Licence**”) to display, publish, distribute and copy the Photographic Works for the purposes, territories, media and time period specified in the Confirmation.

1. LICENCE GRANTED TO CLIENT

- 1.1 “**Licence**” means the rights to display, publish and copying the Photographic Works for the purpose, territories, media and time period specified in the Confirmation (“**Photographic Works**” includes films, negatives, prints, digitised images or images in electronic or any other form or medium produced by the Photographer and those new creations made pursuant to clause 3.2) granted by the Photographer to the Client under the Licensing Documents (“**Licensing Documents**” means this Terms & Conditions, Confirmation and other documents governing the Licence).
- 1.2 The Client shall be supplied with the Photographic Works for displaying, publication, distribution and copying on the basis of the Licensing Documents, marked by ticking the checkbox as either Exclusive or Non-exclusive.
- 1.3 For the avoidance of doubt, for the purpose of the Licensing Documents, copying shall mean reproducing the work in any material form, which includes storing the work in any medium by electronic means and the making of a copy in 3 dimensions of a 2-dimensional work and the making of a copy in 2 dimensions of a 3-dimensional work.

2. CONDITIONS OF LICENCE

- 2.1 The Licence to use the Photographic Works begins from the date of commencement of work by the Photographer. No use may be made of any Photographic Works before full payment is made unless the Photographer’s prior written consent is obtained.
- 2.2 Subject to clause 4 herein, the Licence granted to the Client must not be assigned to any third party without the Photographer’s prior written consent.
- 2.3 Unless otherwise specified in the Licensing Documents, the Client shall not manipulate, distort or make other alterations (including overprinting by text or by other Photographic Works) to the Photographic Works.
- 2.4 The Client shall or shall procure any third party which acquired, directly or indirectly, any hardcopy or softcopy of the Photographic Works through the Client in the course of accomplishing the purpose of the Licence to, erase or destroy all hardcopy and softcopy of the Photographic Works as soon as practically possible after displaying, publishing, distributing or copying such Photographic Works, except when it is done within the purpose of the Licence or with the Photographer’s prior consent.
- 2.5 Notwithstanding any clauses the Licensing Documents, the Photographer always retains the right to use the Photographic Works in any manner and in any part of the

world after displaying, publishing, distributing or copying of such Photographic Works 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 such competitions or awards;
- (b) promoting the Photographer's Photographic Works in any manner; and
- (c) Displaying the Photographic Works at any art galleries or other premises.

2.6 Unless otherwise indicated in the Licensing Documents, use of any Photographic Works by the Client must be accompanied by an adjacent credit line acknowledging the Photographer's name and ownership of the copyright.

3. COPYRIGHTS IN THE PHOTOGRAPHIC WORKS

3.1 Except as provided for under clause 5 herein, the copyright and proprietary rights in all Photographic Works under the Licence belong to the Photographer, and the Photographer shall remain the sole author and first owner of the Photographic Works.

3.2 Subject to clause 5 herein, while the copyright in the Photographic Works must remain with the author, the Photographer, all photographic works created from any manipulation, alternation, distortion or overprinting shall result neither in another photographic work nor any new copyright.

3.3 With respect to the copyright works which result from or arising from or in connection with the Photographer's performance of his obligations under the Licensing Documents, the Photographer shall be the author and the first owner of such copyright works.

3.4 As the author of the Photographic Works, the Photographer shall have, other than the rights under the Licensing Documents, all Moral Rights ("Moral Rights" includes the right to be identified as author or director, right to object to derogatory treatment of work and other rights given by other applicable laws) related to the Photographic Works.

3.5 The Client is not entitled to any property in:

- (a) any authored or artistic works created by the Photographer to support the Photographic Works, or
- (b) any materials used for the creation of an authored or artistic work, as a result of plans or drawings, which are commissioned by the Photographer, or
- (c) any acquisition of goods for use in supporting the Photographic Works.

Such goods, materials, authored or artistic works shall remain the property of the Photographer, unless otherwise agreed between the Photographer and the Client.

4. LIMITATIONS ON AND FEES FOR THE PHOTOGRAPHIC WORKS

4.1 Except as agreed in writing otherwise, the territories, media and time period specified for the initial grant of Licence shall be one calendar year, one medium and one territory.

(a) The meaning of territory is as follows:

- (i) The Hong Kong S.A.R. (“**Hong Kong**”)
- (ii) The Macao S.A.R
- (iii) Taiwan
- (iv) any one country

Each of (i) to (iv) above shall be regarded as an independent territory.

(b) Media are classified as follows:

- (i) Printed media (e.g. newspaper, magazines, brochures etc.)
- (ii) POP media (e.g. flags, signs, labels etc.)
- (iii) Indoor media (e.g. MTR, malls etc.)
- (iv) Outdoor media (e.g. bus stop and panel advertisements, external wall advertisements etc.)
- (v) Electronic media (e.g. internet etc.)
- (vi) Television and movie media

4.2 Subject to clause 4.1 herein, Client shall pay additional fee for extending the time period, territories or media for the Licence. Details of the fee shall be stipulated in the Confirmation while time period, territories and media are treated in the following manner:

(a) Time period

Each additional time period shall be one calendar year, and part of a year is regarded as a complete calendar year.

(b) Territory

Each additional territory as listed as (i) to (iv) under clause 4.1(a) herein shall be regarded as an independent and separate territory.

(c) Media

Each additional medium as listed as (i) to (v) under clause 4.1(b) herein shall be regarded as an independent and separate medium.

- 4.3 For Licence granted (a) with perpetual time period, (b) worldwide and/or (c) with unlimited media, the relevant fee shall be stipulated in the Confirmation.

5. ASSIGNMENT OF COPYRIGHTS IN PHOTOGRAPHIC WORKS

- 5.1 Where the Licensing Documents specify that copyright in the Photographic Works on the basis of the Licensing Documents is to be assigned to the Client in consideration of the Client's full payment for such Photographic Works, the Photographer assigns to the Client all or a part of the copyright in Photographic Works pursuant to the Licensing Documents.
- 5.2 As a condition of this assignment the Client shall indemnify the Photographer in respect of any liability to the Photographer arising from any use of the assigned copyright material.

6. PHOTOGRAPHER'S FEES AND RELEVANT EXPENSES

- 6.1 Photographer's fees (including deposit & balance) and relevant expenses are payable in the manner and at the times as stipulated on the Confirmation. The Photographer reserves always the right to commence work before payment of deposit.
- 6.2 Overdue Surcharge at the rate of _____ per month calculated on a daily basis, shall be charged on any unpaid amount from the due date [specified on the Confirmation or invoices] until settlement.

7. NIGHT AND GENERAL HOLIDAYS SHOOTS

- 7.1 Additional fee may be levied for commission of Photographic Works between midnight and 0600 hour on Mondays to Saturdays and between midnight and 2359 hour on Sundays and general holidays as is gazetted by the government of Hong Kong.

8. OVERSEAS SHOOTING

- 8.1 Where a shooting is to take place out of territory of the Hong Kong, the Client shall clients shall be required to pay a deposit, amount agreed upon by both parties before the Photographer commences any work. The Client shall be responsible for payment or reimbursement of all expenses in connection with such overseas shooting, including accommodation, traveling, food & beverages, insurance and other relevant expenses.

9. INSURANCE

- 9.1 Client shall take out insurance in respect of the Photographer and each crew member taking part in the production of the Photographic Works (including accident, overseas medical, personal safety, disability and property insurance). All relevant insurance premium shall be borne by the Client, and the insured sum shall be determined between the parties.
- 9.2 If the Client did not perform its obligation of taking out insurance coverage under clause 9.1 herein, the Photographer may take out such insurance under clause 9.1 himself. Under such circumstances, the Client may not dispute over any matter of the

insurance taken out by the Photographer.

9.3 Upon the request of either party, the other party shall make available the original of the insurance policies for inspection by and/or provide copies of the same to the party making such request.

10. CANCELLATION / POSTPONEMENT FEES

10.1 When a booking is confirmed as definite, the Client becomes liable for the full payment to the Photographer and the Photographer becomes liable to complete the Photographic service.

10.2 Where the Client cancels the booking:

- (a) within 48 hours of the booked shoot day, the Client must pay _____ of all relevant expenses incurred for that shoot and _____ of the Photographer's fees,
- (b) 48 hours before the booked shoot day, the Client must pay _____ of all relevant expenses incurred for that shoot and _____ of the Photographer's fees.

10.3 Where the Client postpones or changes the booking:

(a) within 48 hours of the booked shoot day, such shoot must be carried out within the next 14 days, failing which, such shoot shall be regarded as a cancellation; or

(b) for more than 14 days,

clause 10.2 shall apply.

10.4 For the purpose of this clause 10 (save and except 10.3(b)), hours and days shall not include general holidays and public holidays as gazetted by the Government of Hong Kong from time to time.

11. URGENT WORK

11.1 Where the Client demands Photographic Works on an urgent basis, including where the Client requests for production of Photographic Works ahead of the original agreed deadline and the Photographer is unable to carry out a shoot or correct a shot because of such urgent deadline, the Photographer shall not be liable for any losses or damages arising out of the inability to carry out a shoot but shall bear all relevant expenses that have already been incurred.

11.2 The Client shall bear all relevant expenses that have been incurred (clause 9.2).

12. CHANGE OF FEE ESTIMATE

12.1 Statements of fees and relevant expenses are estimates and not firm quotations and are subject to alteration. The Photographer must bring to the Client's attention of any change to the estimate.

12.2 Any change to the job specifications made by the Client may alter the fee estimate and Disbursement, including all expenses relating to working overtime.

13. WEATHER CONDITIONS

13.1 A weather-permitting booking must be agreed between the Client and Photographer prior to the shoot. Upon confirmation by the Client of any cancellation of a shoot due to bad weather, the Client must pay the Photographer all expenses incurred and 100% of the Photographer's fee which was to be charged for the shoot.

14. UNCONTROLLABLE EVENTS (FORCE MAJEURE)

14.1 It is agreed that neither party shall be liable for delay or failure to perform any of obligations under the Licensing Documents if such delay or failure is due to acts of god, fire, earthquake, labour dispute, war, martial law, government order, riot, revolution, outbreak of epidemic diseases (including SARS and avian flu) or any other cause beyond the reasonable control of the parties hereto ("**Uncontrollable Events**").

14.2 On the occurrence of any Uncontrollable Event, each party shall inform the other the problem of the existence of such condition and shall discuss with each other to arrive at some alternative agreements. Under such circumstances, the Client must be liable to pay all amounts as required to meet the emergency, and shall exercise its best endeavour to safeguard the personal safety of all crew members; in addition, the Client shall, when in the case of an overseas shooting, exercise its best endeavour to escort all crew members back to Hong Kong.

15. GUARANTEE AS TO PHOTOGRAPHIC WORKS

15.1 A representative of the Client should be present and such at the shoot and such representative is responsible for approving the work. Acceptance of the work by this representative deems to be the Client's confirmation that the Photographer has satisfied the requirements of the shoot. Where there is no representative at the shoot, the Photographer's own interpretation of the Client's instructions and requirements shall be deemed to be conclusive and acceptable to the Client.

15.2 If there is a dispute over the Photographic Works which is unresolved after negotiations between the Photographer and the Client, the dispute shall be referred to the Hong Kong Institute of Professional Photographers who shall then appoint suitably qualified persons to conduct an arbitration.

16. CLIENT CONFIDENTIALITY

16.1 The Client must advise the Photographer if any material or information communicated to the Photographer for the purpose of the photography is confidential. The Photographer must keep any such confidential material or information strictly confidential, except wheresuch work under the engagement is in violation of the laws of Hong Kong.

17. RESPONSIBILITY FOR CONTRACTORS

- 17.1 The Client is responsible for settling all payments (including rollover fees) and fulfilling all other obligations to person(s) who supply any product or perform any service in respect of the shoot (“**Contractors**”).
- 17.2 Where the Client requests the Photographer to arrange and enter into contracts with Contractors on behalf of the Client, the Photographer acts as agent for the Client and charge an additional sum as agent’s fee as stated in the Confirmation. The Client shall indemnify the Photographer against all costs, relevant expenses and other obligations arising from the Photographer acting as an agent for the Client.

18. PERMITS AND APPROVAL

- 18.1 Where the Photographer arranges and/or contracts models, the Photographer is responsible for obtaining any necessary model releases.
- 18.2 Where the Client arranges and/or contract models or shooting venue, the Client shall be responsible for obtaining all relevant approval, including but not limited to, the right of access and/or the right of photo shooting in any place where the Photographer is required to carry out his job described in the Confirmation and shall hold the Photographer harmless in all respects in relation thereto.
- 18.3 It is the responsibility of the Client to obtain all permits and approvals (e.g. model releases and moral rights and privacy waivers) necessary for the use of assigned copyright in the Photographic Works by that Client.

19. ARRANGEMENT FEE FOR ENGAGING MODELS

- 19.1 Should the Client request the Photographer to arrange for models with model agencies, in addition to being liable to pay for all fees related to the engagement of models, the photographer is entitled to a surcharge for such services, said amount mutually agreed upon by both parties.
- 19.2 In respect of the Photographic Works, the Photographer shall not be responsible for any liability (including monetary liabilities) in relation to or arising from the use of Photographic Works outside the territories, media and time period as agreed by the models or model agencies. The Photographer and model agencies hereby reserve all rights thereunder.
- 19.3 For the avoidance of doubts, responsibility of contractors under clause 17 herein applies to this clause 19, that is, models and model agencies are within the meaning of contractors.

20. INDEMNITY FOR BREACHES OF INTELLECTUAL PROPERTY

- 20.1 The Client shall fully indemnify the Photographer against any claims, costs, or expenses arising out of any illegal or defamatory Photographic Works produced for the Client and any infringement of any intellectual property right of any person. The Client is responsible for obtaining any authorisation, clearance, licence or other form of approval necessary for the lawful use of any third party intellectual

property works.

21. CLIENT PROPERTY AND MATERIALS SUPPLIED

- 21.1 All property and material supplied to the Photographer by or on behalf of the Client are held at the Client's risk and the Photographer takes no responsibility for the insurance of such material.
- 21.2 The Client must pay any sum charged by the Photographer for handling or storing material supplied by or on behalf of the Client. The Client may leave the material at the shooting scene for a maximum of 7 days after shooting during which time the Photographer may charge fees in relation thereto. Upon expiry of the 7 days, all material shall be deemed to be abandoned by the Client and the Photographer shall have the absolute right of disposal thereof. The Photographer also charges the Client for all costs for disposal of the material.

22. PHOTOGRAPHER NOT LIABLE FOR LOSSES

- 22.1 Photographer shall not be liable for (other than that caused by the dishonesty or negligence of the Photographer):
- (a) Any loss or damage caused by any delay in the completion of the Photographic Works;
 - (b) Any loss of profits;
 - (c) Any indirect or consequential loss of whatever nature; or
 - (d) Any loss arising directly or indirectly due to any negligence on the part of Photographer or its employees.
 - (e) Any third party's liability

23. LIMITATION OF THE PHOTOGRAPHER'S LIABILITY

- 23.1 The Photographer's aggregate liability to the Client for any and all costs, loss or damage suffered by the Client, howsoever caused, arising out of or in connection with the Licence and/or this terms and conditions, shall not exceed the full value of the Photographer's fee payable by the Client for that job.

24. VERBAL CONFIRMATION OR CONFIRMATION BY CONDUCT

- 24.1 Where the Client did not sign the Confirmation, all verbal confirmation or confirmation by conduct in respect of the engagement of the Photographer to produce Photographic Works shall be deemed to be effective and final, and all relevant Licensing Documents shall be deemed to be legally effective and binding upon the parties.

25. TERMINATION, TREATMENT AND EXTENSION OF LICENCE

- 25.1 The Licence shall be terminated upon the natural expiry of the expiry date as stated on the Confirmation.

25.2 Should the Client wish to continue to use the Licence, it must notify the Photographer in writing of such intention and period of extension and the licence fee thereof shall be determined through further negotiation between the parties.

26. SEVERABILITY

26.1 If any provision of the Licensing Documents is found invalid, void or unenforceable by any competent authority, such provision shall be severed from the Licensing Documents and the remaining provisions of the Licensing Documents shall continue in full force and effect. The Licensing Documents shall, however, be amended by the parties in such reasonable manner so as to achieve, without illegality, the intention of the parties with respect to that severed provision.

27. FURTHER ASSURANCE

27.1 Each party shall do and execute or procure to be done and executed all necessary acts, deeds, documents and things as may be reasonably necessary to give effect to the Licence.

28. LANGUAGE

28.1 If there is any conflict between a term or condition of the English and Chinese versions of the Licensing Documents, then the [Chinese] version shall prevail.

29. GOVERNING LAW AND JURISDICTION

29.1 The Licensing Documents shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto hereby irrevocably submit to the [non-exclusive] jurisdiction of the Hong Kong courts in relation to any proceedings arising out of or in connection with the Licensing Documents.

30. MISCELLANEOUS

30.1 The Licensing Documents constitute the entire agreement between the parties relating the subject matter hereto and supersede all previous agreements in this regard.

30.2 If there is any conflict or inconsistency between the provisions of the Licensing Documents and other documents, the Licensing Documents shall prevail.

30.3 No variation of the Licensing Documents shall be valid unless it is in writing and signed by or on behalf of each of the parties.

30.4 The failure to exercise or delay in exercising a right or remedy under the Licensing Documents shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. No single or partial exercise of any right or remedy under the Licensing Documents shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

30.5 Except as expressly provided in the Licensing Documents, the rights and remedies contained in the Licensing Documents are cumulative and not exclusive of any

rights or remedies provided by law.

31. RESERVATION OF RIGHTS

- 31.1 All rights not specifically and expressly granted to the Client by the Licensing Documents are reserved to the Photographer.