

## Sample Terms and Conditions

**This document is set up to be appropriate in most situations. As with any legal document, you should examine each term to be sure it conforms with your business practices, and modify it as necessary.**

### [1] Definition:

“Image(s)” means all visual representations furnished to Client by Photographer, whether captured, delivered, or stored in photographic, magnetic, optical, electronic, or any other media.

Unless otherwise specified anywhere in this document, Photographer may deliver, and Client agrees to accept, Images encoded in an industry-standard data format that Photographer may select, at a resolution that Photographer determines will be suitable to the subject matter of each Image and the reproduction technology and uses for which the Image is licensed.

It is Client’s responsibility to verify that the digital data (including colour profile, if provided) are suitable for reproduction of the expected quality and colour accuracy, and that all necessary steps are taken to ensure correct reproduction. If the data are not deemed suitable, Photographer’s sole obligation will be to replace or repair the data, but in no event will Photographer be liable for poor reproduction quality, delays or consequential damages.

Unless otherwise specifically provided elsewhere in this document, Photographer has no obligation to retain or archive any of the Images after they have been delivered to Client. Client is responsible for sending an authorised representative review the images remotely during the assignment. If no review is made during the assignment, Client is obligated to accept Photographer’s judgement as to the acceptability of the Images.

**This term prohibits certain uses, unless you specify elsewhere that such users are being licensed.**

### [2] Rights:

All images and rights relating to them, including copyright and ownership rights in the media in which the Images are stored, remain the sole and exclusive property of Photographer. Unless otherwise specifically provided elsewhere in the document, any grant of rights is limited to a term of one year from the date hereof and to usage in print (conventional non-electronic and non-digital) media in India.

Unless otherwise specifically provided elsewhere in this document, no image licensed for use on a cover of a publication may be used for promotional or advertising purposes without the express permission of Photographer and the payment of additional fees.

No rights are transferred to Client unless and until Photographer has received payment in full. The parties agree that any usage of any Image without the prior permission of Photographer will be invoiced at three times Photographer’s customary fee for such usage. Client agrees to provide Photographer with three copies of each published use of each Image no later than 60 days after the date of first publication of each use. If any Image is being published only in an electronic medium, Client agrees to provide Photographer with an electronic tear sheet, such as a PDF facsimile or URL of the published use of each such photograph, within fifteen (15) days after the date of first publication of each use. Unless otherwise specifically provided elsewhere in this document, all usage rights are limited to print media, and no digital usages of any kind are permitted. This prohibition includes any rights or privileges that may be claimed under the Copyright Act, 1957 or any similar applicable law.

Digital files may contain copyright and other information imbedded in the header of the image file or elsewhere; removing and/or altering such information is strictly prohibited and constitutes violation of the Copyright Act.

All fees and expenses payable under this agreement are required irrespective of whether Client makes actual use of the Images or the licenses to use them. Unless specifically provided elsewhere in this document, no reprographic, reprint, republication or other secondary reproduction usages may be made, and usage right are granted only for one-time, Indian editorial print editions of the publication listed herein and six month searchable archive use on the website of that publication.

**This clause is not always included. Sometimes you allow the client to retain the images because you expect to license additional uses later on. However, you can keep the clause and grant specific permission elsewhere in your paperwork.**

### **[3] Return and Removal of Images:**

Client assumes insurer's liability

- (a) to indemnify Photographer for loss, damage or misuse of any Images, and
- (b) to return all Images prepaid and fully insured, safe and undamaged, by bonded messenger, air freight, or registered mail.

Unless the right to archive Images has been specifically granted by Photographer in this document, Client agrees to remove and return or destroy all digital copies of all Images. All Images shall be returned, and all digital files created by or on behalf of Client containing any Images shall be delivered to Photographer, deleted or destroyed, within thirty days after the later of: (1) the final licensed use as provided in this document, and (2) if not used, within thirty days after the date of the expiration of the license. Failure to return Images on time will result in loss to Photographer due to his resulting inability to license such Images. Client therefore agrees to pay a holding fee of Rs \_\_\_\_\_ per day from the return date until the day on which the Images are actually received by Photographer.

Client assumes full liability for its principles, employees, agents, affiliates, successors, and assigns (including without limitation independent contractors, messengers, and freelance researchers) for any loss, damage, delay in returning or deleting, failure to return, or misuse of the Images.

**Note that this clause calls for an attached schedule of images and valuations. Keep in mind that any declared value must be reasonable and provable if it is to be accepted by a court.**

### **[4] Loss or Damage:**

Reimbursement by Client for loss or damage of each original photographic transparency or film negative ("Original") shall be in the amount of Rs \_\_\_\_\_ or such other amount if a different amount is set forth next to the lost or damaged item in the attached schedule. Reimbursement for loss or damage of each non-digital duplicate image shall be in the amount of Rs \_\_\_\_\_.

Reimbursement for loss or damage of each digital file shall be in the amount of Rs \_\_\_\_\_.

Reimbursement by Client for loss or damage of each item other than as specified above shall be in the amount set forth next to the item on the reverse side or attached schedule.

Photographer and Client agree that said amount represents the fair and reasonable value of each item, and that Photographer would not sell all rights to such item for less than said amount. Client understands that each Original is unique and does not have an exact duplicate, and may be impossible to replace or recreate. Client also understands that its acceptance of the stipulated

value of the Images is a material consideration in Photographer's acceptance of the terms and prices in this agreement.

**Note that you have to specify the placement of the credit.**

#### **[5] Photo Credit:**

All published usages of Images will be accompanied by written credit to Photographer or copyright notice. If a credit is required but not actually provided, Client agrees that the amount of the invoiced fee will be subject to a three-times multiple as reasonable compensation to Photographer for the last value of the credit line.

**In many circumstances it's not reasonable to forbid *all* alternations. But if you let the client do more than the simple adjustments to make the image work right on press, make sure you have got releases that allow such reworking.**

#### **[6] Alterations:**

Client may not make or permit any alterations, including but not limited to additions, subtractions, or adaptations in respect of the Images, alone or with any other material, including making digital scans unless specifically permitted, except the cropping and alterations of contrast, brightness, and colour balance, consistent with reproduction needs may be made.

**You should always include this clause. It says that the client, not you, will be responsible for what the client does with your images.**

#### **[7] Indemnification:**

Client will indemnify and defend Photographer against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of the creation or any use of any Images or arising out of use of or relating to any materials furnished by Client. Unless delivered to Client by Photographer, no model or property release exists, and it is Client's responsibility to obtain the necessary permissions for usages that require any model or property releases not delivered by Photographer. It is Client's sole responsibility to determine whether any model or property releases delivered by Photographer are suitable for Client's purposes. Photographer's liability for all claims shall not exceed in any event the total amount paid under this invoice.

**This term is intended to protect you from any unforeseeable problems that may arise out of the use of client-supplied materials, props, etc. It is not a substitute for insurance (which you should always carry), but it is an added safeguard.**

#### **[8] Assumption of Risk:**

Client assumes full risk of loss or damage to or arising from materials furnished by Client and warrants that said materials are adequately insured against such loss, damage, or liability.

#### **[9] Transfer and Assignment:**

Client may not assign or transfer this agreement or any rights granted under it.

This agreement binds Client and insures to the benefit of Photographer, as well as their respective principals, employees, agents, and affiliates, heirs, legal representatives, successors, and assigns. Client and its principals, employees, agents, and affiliates are jointly and severally liable for the performance of all payments and other obligations hereunder. No amendment or waiver of any terms is binding unless set forth in writing and signed by the parties.

However, the invoice may reflect, and Client is bound by, Client's oral authorisations for additional Images, fees and expenses that could not be confirmed in writing because of insufficient time or other practical considerations.

This agreement incorporates by reference the Copyright Act of 1957, as amended from time to time.

Photographer is an independent contractor and not an employee. If Photographer is deemed under any law to be an employee of Client, and if the Images are therefore considered works made for hire, the Client hereby transfers the copyright to all such Images to Photographer. Client agrees to execute any documents reasonably requested by Photographer to accomplish, expedite or implement such transfer.

**Redressal of disputes is important.**

**[10] Disputes:**

Except as provided by [11] below, any dispute regarding this agreement shall, at Photographer's sole discretion, either:

- (1) be arbitrated in Mumbai under the Arbitration & Conciliation Act, 1996,  
OR
- (2) be adjudicated in Mumbai by a court not less than the High Court.
- (3) In the event of a dispute, Client shall pay all court costs, Photographer's reasonable legal fees, and expenses, and legal interest on any award or judgement in favour of Photographer.

**It is always good to specify the jurisdiction.**

**[11] Jurisdiction:**

Client hereby expressly consents to the jurisdiction of the courts in Mumbai.

**[12] Overtime:**

In the event a shoot extends beyond eight consecutive hours, Photographer may charge for such excess time of assistants and freelance staff at the rate of 1 & 1/2 times their hourly rates.

**The charges for a reshoot are established in this term. Note: This clause does not absolve you from having to reshoot at your own expense if your negligence is the cause of a reshoot.**

**[13] Reshoots:**

Client will be charged 100 percent fee and expenses for any reshoot required by Client. For any reshoot required because of any reason outside the control of Client, specifically including but not limited to acts of God, nature, war, terrorism, civil disturbance or the fault of a third party, Photographer will charge no additional fee, and Client will pay all expenses. If Photographer charges for special contingency insurance and is paid in full for the shoot, Client will not be charged for any expenses covered by insurance. A list of exclusions from such insurance will be provided on request.

**This term sets up a cancellation policy.**

**[14] Assignment cancellations and Postponements:**

Cancellations: Client is responsible for payment of all expenses incurred up to the time of cancellation of the assignment, plus 50 percent of Photographer's fee; however, if notice of cancellation is given less than two business days before the shoot date, Client will be charged 100 percent fee.

Postponements: Unless otherwise agreed in writing, Client will be charged 100 percent fee if postponement of the assignment occurs after Photographer has departed for location, and 50 percent fee if postponement occurs before departure to location. Fees for cancellations and postponements will apply irrespective of the reasons for them, specifically including but not limited to weather conditions, acts of God, nature, war, terrorism, civil disturbance, and the fault of a third party.