

TERMS AND CONDITIONS

- A. DEFINITIONS:** "Photographer" refers to Mask Photo, its representatives, successors, assigns, agents and affiliates. "Client" refers to the commissioning party or company named on the reverse, its representatives, successors, assigns, agents and affiliates. "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 on the reverse, Photographer may deliver, and Client agrees to accept, Images encoded in any 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 color profile, if provided) are suitable for image reproduction of the expected quality and color 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.
- B. 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 in writing, 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 unauthorized usage of any Image 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 not 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 tearsheet, 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. Digital files may contain copyright and other information embedded in the header of the image file or elsewhere; removing and/or altering such information is strictly prohibited and constitutes unauthorized use. 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 writing, no reprographic, reprint, republication or other secondary reproduction usages may be made.
- C. 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 any relevant invoice. 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. 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 authorized representative to the assignment. If no review is made during the assignment, Client is obligated to accept Photographer's judgment as to the acceptability of the Images.
- D. ALTERATIONS:** Client may make or permit any alterations, additions, or subtractions with respect to the Images, including without limitation any digitalization or synthesizing of the Images, alone or with any other material, by use of computer or other electronic means or any other method or means now or hereafter known, excepting any alterations that are intended to, or are likely to circumstantially, damage the reputation or professional image of Photographer, including insufficient or amateur retouching or photofinishing, which shall constitute unauthorized use, subject to Photographer's sole discretion.
- E. DEFAULT:** In the event of non-payment within 30 days, or any other breach of this Agreement by Client, Client shall pay all of Photographer's costs and expenses incurred in connection with enforcement of the terms of this Agreement, including Photographer's reasonable attorneys' fees and including a fee equal to three (3) times Photographer's fee for the materials governed by this contract.
- F. TRANSFER AND ASSIGNMENT:** Client may not assign or transfer this agreement or any rights granted under it, unless as specified in writing. This agreement binds Client and inures 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 authorizations 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 1976, as amended. It also incorporates by reference those provisions of Article 2 of the Uniform Commercial Code that do not conflict with any specific provisions of this agreement; to the extent that any provision of this agreement may be in direct, indirect, or partial conflict with any provision of the Uniform Commercial Code, the terms of this agreement shall prevail. To the maximum extent permitted by law, the parties intend that this agreement shall not be governed by or subject to the UCITA of any state. 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 under the U.S. Copyright Act, 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.
- G. 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.
- H. CANCELLATIONS AND POSTPONEMENTS:** 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 (2) business days before the shoot date, Client will be charged 100 percent fee. Unless otherwise agreed in writing, Client will be charged a 100 percent fee if postponement of the assignment occurs after photographer has departed for location, and 50 percent fee if postponement occurs prior to 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.
- I. OVERTIME:** In the event a shoot extends beyond eight (8) consecutive hours, Photographer may charge for such excess time of assistants and freelance staff at the rate of 1 ½ times their hourly rates.
- J. PERSISTENCE OF CONTRACT:** In the event that any of the provisions of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.
- K. DISPUTES:** Except as provided in [L] below, any dispute regarding this agreement shall, at Photographer's sole discretion, either: (1) be arbitrated in Fremont, California, under rules of the American Arbitration Association and the laws of California; provided, however, that irrespective of any specific provision in the rules of the American Arbitration Association, the parties are not required to use the services of arbitrators participating in the American Arbitration Association or to pay the arbitrators in accordance with the fee schedules specified in those rules. Judgment on the arbitration award may be entered in any court having jurisdiction. Any dispute involving \$5,000 or less may be submitted without arbitration to any court having jurisdiction thereof. OR (2) be adjudicated in Fremont, California under the laws of the United States and/or of California. (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 judgment in favor of Photographer.
- L. FEDERAL JURISDICTION:** Client hereby expressly consents to the jurisdiction of the Federal courts with respect to claims by Photographer under the Copyright Act of 1976, as amended, including subsidiary and related claims.