



# New Zealand Institute of Professional Photography Inc

## Standard Terms: (Form 1104) © November 2004

All capitalised words are defined in the definitions section below.

### 1. INSTRUCTIONS MUST BE IN WRITING

The Client must ensure that all their instructions and expectations (or variations of such) regarding the Booking or Order are agreed in writing.

### 2. LICENCE GRANTED TO CLIENT

The copyright in all Photographic Works resulting from the Booking or Order remains the property of the Photographer.

The Photographer does not accept commissions to create Photographic Works. The Photographer and the Client have agreed by these standard terms to override section 21(3) of the Copyright Act 1994.

The Photographer grants the Client a non – exclusive Licence to use those parts of the Photographic Works selected by the Photographer and presented to the Client, however this Licence does not include the right to copy, reproduce or publish the Photographic Works or any part of the Photographic Works. The Client may license any or all of the Photographic Works from the Photographer's selection.

The Client acknowledges that the purpose of the creation of the Photographic Works includes the right of the Photographer to:

- enter the Photographic Works into photographic competitions or awards and for their use in any material published in connection with promoting those competitions or awards; and
- advertise or otherwise promote the Photographer's Work; and
- submit the Photographic Works for display at art galleries or other premises; and
- use the Photographic Works for any other purpose within the Photographer's business activities.

### 3. CONDITIONS OF LICENCE

This Licence to use, and the right to use, the Photographic Works comes into effect from the date of full payment of the Order, except where the Photographer gives express written permission.

### 4. COPYRIGHT IN THE WORKS

All copyright that arises out of the performance of the Photographer's obligations under this contract shall arise not by commission but shall be the creation of the Photographer. The Photographer shall remain the first owner of the Photographic Works and the Client shall be supplied with the Photographic Works for use on the basis of the terms of this Licence. The Client shall have the right to seek further licences for reuse of any copyright at the Photographers normal prices at the time of the request.

### 5. MORAL RIGHTS

The Photographer asserts his or her moral rights in respect of the Photographic Works and any reference to the Photographic Works shall be accompanied by full attribution to the Photographer in a form to be approved by the Photographer.

### 6. PRIVACY and PERSONAL INFORMATION

The Photographer shall abide by the Privacy Act 1993 and shall take all practical steps to achieve privacy protection.

### 7. PAYMENT

The Client shall pay the Photographer the various amounts payable in accordance with the Booking and/or Order agreement(s).

### 8. INTEREST

Any monies not paid in full in accordance with clause 7 may be charged with interest at a rate of 2% per month or part month overdue.

### 9. INDEMNITY

The Client undertakes to indemnify the Photographer for any loss, damage, or expense (including costs as between solicitor client basis) suffered or incurred as a result of any breach by the Client of these conditions or in recovering any moneys due and such loss, damage or expense shall be moneys due for the purposes of these terms and conditions.

### 10. CANCELLATION OR POSTPONEMENT OF BOOKING

Where the Client cancels or postpones a Booking appointment, the Client must pay, at the Photographer's discretion, the amounts that have already been invoiced or are due as outlined on the Booking agreement, regardless of whether the appointment is attended or not.

Where a booked appointment involves more than one person, it is the Client's responsibility to ensure that everyone required arrives at the appointment on time.

Failure of any person to arrive at the appointment on time will result in, at the Photographer's discretion, cancellation or postponement.

The Booking appointment and any fees paid prior to cancellation or postponement of the appointment are transferable to another person, as if it were the original person, as long as the Booking is similar and the date and time of the appointment are not changed.

### 11. CLIENT CONFIDENTIALITY

The Client must advise the Photographer as to whether any material or information communicated to him/her is of a confidential nature. The Photographer will keep confidential material or information communicated to him/her in confidence for the purposes of the photography, except where it is reasonably necessary to enable the Photographer to carry out his/her obligations in relation to the Booking or Order.

### 12. INDEMNITY FOR BREACHES OF INTELLECTUAL PROPERTY

The Client shall fully indemnify the Photographer in respect of any claims, costs, or expenses arising out of any illegal or defamatory Photographic Works produced for the Client or any infringement of an intellectual property right of any person.

### 13. COLOUR VARIATION

The Client acknowledges that Photographic Works may fade or discolour over time due to the inherent qualities of materials used. The Client releases the Photographer from any liability for any claim based upon fading or discolouration.

### 14. IMPORTANT NOTICE – CONSUMER GUARANTEES ACT 1993

The Consumer Guarantees Act 1993 may apply to the licensed Photographic Works provided by the Photographer if the Client acquires those licensed Photographic Works for personal, domestic or household use or consumption. If this Act applies, nothing in these Standard Terms will limit or exclude the Client's rights under this Act.

If the Client is acquiring the licensed Photographic Works for business purposes, then the Client's rights are subject to these standard terms only and the Consumer Guarantees Act 1993 shall not apply. In this case the Photographer may grant a separate licence under the Standard Terms for Commercial Photography.

### 15. PHOTOGRAPHER NOT LIABLE FOR LOSSES

Except as provided for by the Consumer Guarantees Act 1993 the Photographer shall not be liable for:

- any loss or damage arising by reason of any delay in the completion of the Photographic Works; or
- any loss of profits; or
- any indirect or consequential loss of whatever nature; or
- any loss resulting from any errors or omissions arising from an oversight or a misinterpretation of a Client's verbal instructions arising directly or indirectly from any breach by the Photographer of any of its obligations under the Booking or Order or from any cancellation of the Booking or Order or from any negligence on the part of Photographer.

### 16. LIABILITY OF PHOTOGRAPHER LIMITED

The Photographer's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused, arising out of or connected with the performance or failure of performance of photographic services by the Photographer, except where provided to the contrary by the Consumer Guarantees Act, shall not exceed the full value of the payments made by the Client under the Booking and/or Order agreements.

### 17. ORDER MAY BE TERMINATED ON NOTICE

Effective termination of the Order by the Client must be in writing and give reasonable notice to the Photographer. The Client must compensate the Photographer for all amounts due in accordance with the Order Agreement (including the proportion of the Order that has been completed at the date of termination). Upon receipt of such notice from the Client, the Photographer must take immediate steps to bring the photographic services to a close.

### 18. FORCE MAJEURE

Neither the Client nor the Photographer shall be liable for any loss or damage arising directly or indirectly due to an act of God, fire, armed conflict, labour disputes, civil commotion, intervention of a government, accidents, interruption to transportation, weather or any other cause outside the Photographers control.

### Definitions

**Photographic Works:** includes photographic prints, transparencies, negatives and digital images created by the Photographer.

**Photographer:** means the photographer and where the context requires may include, the studio, photographic company, employees or sub-contractors.

**Order:** includes an order placed by the Client for the production of Photographic Works, an invoice or statement.

**Client:** means the client listed on the Booking or Order agreement.

**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.

**Booking –** includes appointments made for a sitting, viewing and any other meeting where the Photographer has set aside specific time to meet with or do work for the Client.