

# T R GANDER T/A PRESS PHOTOS TERMS AND CONDITIONS OF BUSINESS

## **Introduction**

Thank you for taking the time to read these Terms and Conditions. Before we get into the nuts and bolts I'd like to address a couple of commonly-raised issues. You are of course welcome to just jump to Page 3 for the full T&Cs.

Firstly, these Terms and Conditions exist to protect not only myself and my business, but also my clients' interests.

## **Copyright**

One of the commonest queries is around copyright, but it's actually really simple. In UK law (and in most countries) copyright resides with the creator of the work; in this case, the work meaning photographs. The only exception is when a business has employed a photographer on a staff position (paying a salary, supplying equipment, an office, car, holiday pay, sick pay etc). This does not apply to freelance photographers who are responsible for all their own costs, taxes and who work for multiple organisations.

When a client commissions a freelance photographer it is on the basis that the photographer owns the copyright in the work and the client licenses the images from the photographer.

This has a number of advantages to both parties, but primarily it means that the client only pays for the uses they need (the extent to which they need to exploit the work). So a set of photos commissioned for PR use in local media won't cost as much as the same photos commissioned for use in a national advertising campaign. If a client wants broader uses after the work has been delivered, this can usually be negotiated with the photographer for additional fees.

If a client owns the copyright, they can do anything they want with the pictures including sub-licensing (selling) the images, or the copyright, to third parties. The photographer will have no control over how the images are used even if they morally disagree with how their work is being exploited. Copyright is absolute, which is why it needs to remain the property of the photographer in all but the rarest of circumstances.

The majority of competent photographers work in this way, offering clients a licence which fits their requirements and setting fees to reflect those needs.

To make my clients' lives a bit simpler, my standard packages offer a broad licence to use the images (called a Licence to Use) in all corporate communications in all media (from brochures to website, social media to annual reports etc). These packages don't impose time restrictions partly because I trust my clients to update the images they use on a regular basis. Most of the work I shoot has a 'shelf life' of 3 - 5 years, after which a client would naturally be thinking of replacing those images with fresh ones.

Some photographers do set time limits on the Licence to Use (as will I when appropriate) and this is another good way to ensure fees can be set to reflect usage, or to accommodate a tighter budget.

I do have some restrictions within my standard licence. For example, unless otherwise agreed, my work is only licensed to one end-user (normally the client who has commissioned and is paying for the work). I also don't allow the work to be used in paid-for placement such as promoted social media posts or advertising. If a client needs these additional permissions, I'm always happy to negotiate my fee.

Finally, it's worth remembering that if I don't hold the copyright in my work, I cannot archive the work and therefore cannot re-supply it should a client ever lose their copies. I also can't use the work on my website or to promote myself to other potential clients, and this is clearly a nonsensical situation.

### **Client T&Cs**

Very occasionally a client will attempt to impose their own terms and conditions on a photographer, except that as it is the photographer supplying the client with the licensed work, it should be the photographer setting out the T&Cs just as any supplier of any goods or service does.

If I am presented with client T&Cs, I will consider them, but depending on their content I may have to reject them - a common offending clause is a copyright grab, which is almost always inappropriate and unnecessary. These clauses are often put in by company lawyers who are not versed in copyright and licensing, and often confuse and conflate the two.

If I do accept a client's terms I will add an proportionate uplift to my fee to reflect any clauses which denude my rights or which complicate the relationship in some way.

For 99.99% of the work I do, my clients are happy to accept my T&Cs. I hope you will be too, but if you do have any questions or would like to re-negotiate any specific clauses, do please get in touch and I will do my best to help.

Thank you,

Tim

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## Full Terms and Conditions

### 1. DEFINITIONS.

(a) For the purpose of this agreement “the Client” shall where the context so admits include their respective assignees, sub-licensees and successors in title. “The Client” refers to the Photographer’s direct client or the client’s agent as applicable.

“Photographs” means all photographic material furnished by the Photographer, regardless of media used and/or supplied. “The Photographer” refers to Tim Gander and where the context so admits include his respective assignees, sub-licensees and successors in title.

(b) All contracts verbal or written are only accepted on the basis that the Terms and Conditions of the Photographer are the only ones applicable. Other Terms and Conditions proffered by the Client are specifically excluded unless agreed in writing beforehand by the Photographer.

(c) “Photographs” and “Works” means all photographic material furnished by the Photographer, whether transparencies, negatives, prints, digital files or any other type of physical or electronic material in existence now or yet to be developed.

(d) Where time is of the essence the Photographer entirely at its own discretion may accept an instruction given orally, in this event the Photographer shall accept no liability for any error in executing the order.

(e) All briefs, Instructions, confirmations, or amendments in either physical or electronic documents, phone calls or emails will be considered to be part of the working contract and may be referred to in the event of any dispute.

### 2. COPYRIGHT.

(a) The Author retains the entire copyright in the Photographs and Works at all times, throughout the World and in perpetuity unless explicitly assigned in writing and signed by the Photographer and the Client.

(b) To avoid confusion, where a 'Buyout' is requested, it shall be taken to mean 'exclusivity' and thus shall increase the value of the fee. A 'Buyout' will not transfer copyright to the Client, nor shall it mean in perpetuity.

(c) Where reproduction of Works has taken place and settlement has not been made, the Photographer will make such charges to the publisher of those images as falls within the Copyright, Designs and Patents Act 1988.

(d) The moral rights as outlined in the Copyright, Designs and Patents Act 1988 will apply to the Photographer's work in all cases.

### 3. OWNERSHIP OF MATERIALS.

(a) Title to all Photographs remains the property of the Photographer.

(b) When the Licence to Use the material has expired the Photographs must be returned to the Photographer in good condition within 30 days and any electronic copies of the Photographs must be deleted from the Client's computer systems at the same time.

(c) Title to any materials used in producing the Works is not transferred to the Client upon payment of the invoice.

### 4. Licence to Use

(a) The License to Use comes into effect from the date of payment of the relevant invoice(s).

(b) No use may be made of the Photographs before payment in full of the relevant invoice(s) without the Photographer's express permission in writing.

(c) Any permission that may be given for prior use will automatically be revoked if full payment is not made by the due date or if the Client is put into receivership or liquidation.

(d) The Licence only applies to the Client and product as stated on the invoice and its benefit shall not be assigned to any third party without the Photographer's permission.

(e) A written agreement must be reached with the Photographer before the Photographs may be used for other purposes. Where uses of an image are made which breach the license to use further charges will be made.

(f) Any reproduction rights granted are by way of license only and no partial or other assignment of copyright shall be implied.

(g) On the Client's death or bankruptcy or (if the Client is a Company) in the event of a Resolution, Petition or Order for winding-up being made against it, or if a Receiver or an administration is appointed, any license granted shall immediately cease.

### 5. EXCLUSIVITY.

(a) Unless agreed to in writing on the License to Use and/or the Invoice no exclusivity is given or implied to the Client.

(b) Save for certain circumstances, such as where vulnerable adults or children or sensitive commercial material is represented in the Work, the Photographer retains the right in all cases to use or sell the Photographs.

(c) Exclusivity will not be unreasonably withheld but only on written agreement with the Photographer before work commences.

## 6. CLIENT CONFIDENTIALITY.

(a) The Photographer 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 the photography, save as may be reasonably necessary to enable the Photographer to carry out his obligations in relation to the commission.

## 7. INDEMNITY.

(a) The Client shall be held responsible for ensuring all necessary rights, model releases, clearances or consents which may be required for reproduction of people, places or items depicted within any Works are obtained.

(b) It is acknowledged that the Photographer gives no warranty or undertaking that any such rights, releases or consents are or will be obtained whether in relation to the use of names, people, trade marks, registered or copyright designs or Works of art depicted in any picture.

(c) The Photographer shall only be responsible for obtaining such clearances if this has been expressly agreed in writing before the shoot.

(d) In all other cases the Client shall indemnify the Photographer against all expenses, damages, claims and legal costs arising out of any failure to obtain such clearances.

(e) The Photographer will not be liable for any loss or damage, for any consequential loss of profit or income however caused except by demonstrable and provable negligence of the Photographer, Tim Gander, their employees or agents or otherwise. In all other cases it is the Client's responsibility to insure against such loss or damage.

(f) The Client undertakes to ensure that the use of any image is not obscene, indecent, libellous or unlawful and indemnifies the Photographer against all liabilities arising from the Client's use of the images supplied by the Photographer.

## 8. INVOICING AND PAYMENT.

(a) Invoice/s for the Photographs and any other related work shall be raised within a reasonable period, usually within 14 days, of the delivery of the images to the Client. The Client's payment systems cannot be a bar to the timely raising and/or payment of the invoice/s. Any such delay will, at the photographer's discretion, trigger Late Payment Fees.

(b) Payment by the Client will be strictly within 30 days of the issue of the relevant invoice(s) for the work.

(c) If the invoice is not paid, in full, within 30 days of the issue of the relevant invoice(s) the Photographer reserves the right to charge late payment charges and interest at the rate prescribed by the Late Payment of Commercial Debt (Interest) Act 1998 from the date payment was due until the date payment is made.

(d) In addition, any non-automated contact made to the Client by the Photographer in pursuit of the late payment, whether by letter, email, phone call or other method, will at the Photographer's discretion incur additional fees of a minimum £20.00 + vat for each contact made.

(e) Where a Client is a company and whether or not that company has gone into liquidation the individual directors will be responsible for all outstanding fees and costs in relation to the contract.

(f) If the Client wishes to query an invoice, this must be done in writing or by email not more than 14 days after the date of issue of the invoice.

## 9. EXPENSES.

(a) Where additional expenses or time are incurred by the Photographer 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 such additional expenses or fees at the Photographer's normal rate to the Photographer in addition to the expenses as having been agreed or estimated.

## 10. REJECTION.

(a) Unless a rejection fee has been agreed in advance, there is no right to reject on the basis of style or composition.

## 11. CANCELLATION & POSTPONEMENT.

(a) A booking is considered firm as from the date of confirmation and accordingly the Photographer will, at his/her discretion, charge a fee of cancellation or postponement.

(b) Force Majeure or Act of God - The due performance of this contract is subject to alteration or cancellation by either party owing to any cause beyond their control.

(c) Limitation of Liability - In the unlikely event of a total photographic failure or cancellation of this contract by either party or in any other circumstance the liability of one party to the other shall be limited to the total value of the contract. Neither party shall be liable for indirect or consequential loss.

## 12. RIGHT TO A CREDIT.

(a) The Photographer asserts his statutory right to be identified as the author of his work in accordance with the Part 1, Chapter 4, Section 77 of the Copyright Design & Patents Act 1988 (CDPA). Tim Gander has asserted his moral rights to be identified as author and objects to any derogatory treatment or unauthorised alterations, manipulations or deletions of his works. These rights are asserted in accordance with Section 78, paragraph 3 (a,b) of the act. The persons bound by this assertion are described in Section 78, paragraph 4(c) and paragraph 4(d) of the CDPA.

(b) Where a credit is prescribed in law, it should be placed in a suitable proximity to the publication of the Work as either '© Tim Gander' or 'Photo by Tim Gander'. The publication of any Photograph(s), in print or online, without appropriate credit will be subject to an additional fee of no less than £250.00 + vat, or 100% of the Licence to Use fee for the image, whichever is the higher amount.

### 13. SUPPLY TO THIRD PARTIES.

(a) The license only applies to the Client and product stated on the License to Use. Supply to third parties is only permitted where necessary for the Client to exercise their Licence to Use.

### 14. ELECTRONIC STORAGE.

(a) Save for the purposes of production for the licensed use(s), the Photograph(s) may not be stored or archived in any form without the written permission of the Photographer.

(b) Manipulation of the image or use of only a portion of the image may only take place with the written permission of the Photographer.

(c) Digital Data is stored by the Photographer on the understanding that the Photographer is not responsible for the future integrity of that data, or of any failure to retrieve data from the Photographer's archive.

(d) Photographic material and/or Video Footage is normally made available to the client to download free of charge for one year from the date of delivery of the Work. After that time, it may be removed from the Client-accessible archive and a recovery fee of £45+vat will be charged for a further one year's hosting of specified material.

### 15. Artificial Intelligence (AI)

(a) The Client is not permitted to adapt, change or otherwise alter the Work supplied using AI software without the specific, written agreement of the Photographer. Neither may the client offer or enter the Work into any AI-training tool or system.

### 16. APPLICABLE LAW.

(a) This agreement shall be governed by the Laws of England & Wales.

### 17. VARIATION.

(a) These Terms and Conditions shall not be varied except by agreement in writing.

### 18. NOTES.

Source references for these Terms and Conditions and with grateful thanks to:

<https://www.the-aop.org/information/downloads/legal-business-forms>

<https://www.junction10.photography/terms>

<https://www.johnangerson.com/>

Latest update to these T&Cs: 05th January 2024