

TERMS AND CONDITIONS, COPYRIGHT, LICENCES & CONDITIONS OF IMAGE USE

David Duff Photography

1. Definitions

For the purposes of this agreement, **“The Photographer”** is David Duff trading as David Duff Photography and **“The Client”** is the person or company commissioning the **“The Photographer”** to undertake and deliver an agreed assignment.

“The User” is the company, employer, or employee commissioning **“The Photographer”** to produce images that, as part of that commissioning and agreement, are licensed to **“The User”** for the images to be used under license and in accordance with the restrictions and limitations on the use of the images set out in that Licence of Use. **“Images”** means any images produced/edited/supplied by **“The Photographer”**, whether photographs, prints, digital files or other type of physical or electronic material”.

“Licence” means the Licence issued by the **“The Photographer”** that sets out the terms and conditions under which the images detailed in the Licence of Agreement are permitted to be used by **“the User”**

2. Copyright and Ownership of Materials

The entire copyright, title, and intellectual property rights of any Image, produced by The Photographer, will remain that of David Duff Photography at all times throughout the world and no use of the images may be made without written consent and licensing of the image.

3. Licensing of Images

Licenses are only granted to the commissioning client and are non-transferrable. **“Non-Transferable”** means the rights issued under license cannot be transferred to any third party, organisation, or business to reproduce, use or otherwise replicate the image.

4. Right to a Credit

“The Photographer” asserts both their moral right to be identified as the author of their work and the right to be credited is asserted in accordance with Sections 77 – 79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof. **“The Photographer”** asserts their moral rights and objects to any derogatory treatment, unauthorised alterations, manipulations, or deletions of their work in accordance with S.78, Paragraph 3(a) (b) of the Act. The persons bound by this assertion are listed in S.78, Paragraph 4(c) and 4(d). All credits must be acknowledged and shown as **“©David Duff Photography”**.

5. Use of Images

Images are to be used as agreed within the terms and conditions of use set out in the licence. The Licence of Use is limited to how and where the image is used, and the period of time specified for that use. No other use may be made of the Images without **“The Photographer’s”** written permission and issuance of a new Licence of Use. A Licence of Use must be issued by **“The Photographer”** before Images are used for any purpose after the original Licence of Use has expired.

Manipulation of any Images or use of only a portion of an image, that are the copyright and or intellectual property of **“The Photographer”**, may only take place with the permission of

“The Photographer” under a new Licence of Use which will detail the circumstances and method of manipulation permitted of that image.

When the License of Use has expired an additional fee/charge will be applied and agreed for extended usage between “The Photographer” and “The Client”

6. **Exclusivity**

The usage rights granted are conditional to the “The Client” as detailed in the Licence of Use and may not be assigned, nor may any image submitted to the “The Client” be loaned or transferred to any third party. (Notwithstanding for the purpose of completing the work of “The Client” in producing/printing/circulating/communicating the final production as agreed at the time of commissioning and issue of Licence of use).

“The Photographer” reserves the right to refuse to supply, grant or negotiate a reproduction licence to a third party when requested to do so by “The Client”.

“The Photographer” retains the right in all cases to use the Images covered by any agreement at any time and in any part of the world for the purposes of advertising or otherwise promoting their work.

7. **Client Confidentiality**

“The Photographer” undertakes to adhere to their published Privacy Policy (*Privacy Policy*) and will always maintain a process of client confidentiality.

Commissioning “The Photographer”

When “The Client” decides on the assignment and wishes to commission “The Photographer” a meeting will be arranged where the photographers brief and details of the photoshoot are agreed.

On receipt of the agreed details of the assignment “The Photographer” will communicate to “The Client” (email and attachments) a full written brief of the assignment. This will consist of:

Details of the Clients requirements for the assignment.

Full Costings for the assignment.

The number of images to be supplied and agreed licensed use of the images supplied.

A Detailed Contract of agreement which will include details of “The Photographers” additional fees and hourly rates should “The Client” make changes to the original assignment brief contained in the Contract of Agreement.

Once “The Client” has agreed the above details and returns the Contract of Agreement the commissioning is confirmed and “The Photographer” undertakes not to engage the commissions during the agreed contract dates.

8. **Cancellation or Postponement by “The Client”**

When a booking is Confirmed, if it is subsequently cancelled by “The Client” cancellation contained within the Contract of Agreement will apply fees will apply:

- (i) "The Client" cancels the assignment within 7 days of a confirmed date, a fee of 30% of the commissioned fee will be charged
- (ii) "The Client" cancels the assignment 24 hours before the confirmed date & time, a fee of 80% of the commissioned fee will be charged.
- (iii) "The Client" cancels the assignment on the contracted day of the confirmed date, the full commissioned fee will be charged.

When a Contract of Agreement is confirmed and "The Client" cancels the assignment and/or it is subsequently postponed outside of the time limits listed above, and no alternative assignment dates are confirmed. "The Photographer", at their discretion will invoice, "The Client" a fee for the postponement of €400.00.

"The Client" may also be charged for any additional expenses (venue hire/models/location fees) incurred by "The Photographer" as a result of the cancellation or postponement by the "Client".

9. Cancellation by the Photographer

In the unlikely event "The Photographer" is unable to attend and complete an agreed assignment due to any unforeseen circumstances beyond their reasonable control e.g., sudden illness, injury, victim of crime, flooding etc. or in the event of a total photographic equipment failure, liability will be limited to a full refund of all fees paid to "The Photographer" by "The Client" at that time. In a case of unforeseen postponement "The Photographer" will endeavour to re arrange the assignment to "The Clients" satisfaction.

10.Rejection.

Unless a rejection fee is agreed in advance, there is no right to reject the Images based on the style or composition delivered within the scope of the assignment brief.

11.Assignment Fee & Additional Charges.

"The Photographer" will provide a full quote to "The Client" for the assignment as detailed in 8 above. The total amount including VAT at the appropriate rate will be "The Fee"

Where "The Client" requests changes to the original brief that incur extra expenses or additional time to complete the assignment these changes, expenses and any change to "The Fee" must be agreed in advance between "The Photographer" and "The Client".

An amended brief assignment detailing all relevant changes/requests and a new total fee will be sent by "The Photographer" to "The Client" as soon as possible.

Examples of changes to the original brief could include but are not limited to:

"The Client" is delayed or arrives late to the shoot which will increase the time quoted to complete the assignment.

"The Client" makes changes to the original brief that will increase the agreed time to complete the shoot within the assignment brief and contract of agreement.

"The Client" makes substantial changes outside of the scope of the original assignment brief that will clearly extend the time required or incur additional costs to the assignment.

“The Photographer” reserves the right to charge “The Client” additional expenses and fees as outlined above.

“The Photographer” will invoice for any congestion charges, road toll charges and parking costs, mileage up to 80 miles round trip with additional mileage over the 80 kms charged at 50 cent per kilometre. These fees will be agreed in advance.

12. Payment Terms and Payment

Payment terms are strictly net 30 days from the date of the relevant invoice (“the Due Date”) unless otherwise agreed in advance.

The Photographer reserves the right to charge interest at the rate 8 percentage points above the European Central Banks Reference rate (10.5% as of January 2023) (S1.281 European Communities Late Payment in Commercial Transactions Regulations 2016) or as defined by the Late Payment Of Commercial Debts (Interest) Act 1998 from the due date until the date payment is made. Late payment fees will be clearly communicated in all contracts of agreements and invoices

Payment by BACS is preferred and bank details will be provided on the invoice.

13. Liability and Indemnity

It is “The Client” who must satisfy themselves that all necessary rights, model releases or consents which may be required for reproduction, are obtained and it is acknowledged that “The Photographer” gives no warranty or undertaking that any such rights, model releases or consents have been or will be obtained whether in relation to the use of names, people, trademarks, registered or copyright designs or works of art depicted in any picture.

In the event that the Image issued or reproduced by or with the authority of “The Client” does not have the necessary rights, releases or consents, then “The Client” shall indemnify “The Photographer” against all expenses, damages, claims, or legal costs arising out of any such failure.

14. Licences and Permissions

Some images may be subject to further licensing and permissions if required for commercial advertising or publication use outside of the licensing conditions and permissions under which they were obtained by David Duff Photography. If you use the images purchased from David Duff Photography for unlicensed commercial purposes or in circumstances that breach the original licensing conditions of use, then you may be liable to further costs or remuneration to individuals or organisations that retain, own or manage those rights.

15. Archiving of Images

All copyright images will be stored and archived by “The Photographer”. If “The Client” requires additional copies of the images supplied in the Contract of Agreement and Licence of Use as a result of the original images being lost or destroyed, then a negotiated fee for the resupply and use will be applicable. “The Photographer” reserves the right after a period of 3 years to delete/destroy all images relating to a Contract of Agreement as detailed unless:

“The Client” has requested the retention and storage of the images where a negotiated fee for storage is applicable.

“The Photographer” retains the images for use to promote his work/practice as detailed in Section 6 of these Terms or through commercial exhibition.

16. Applicable Law

This agreement shall be governed by the laws of the European Union, the laws of England and Wales and Scots Law.

17.Variation

No variation of terms and conditions set out herein shall be effective unless agreed in writing by both parties.