

TERMS AND CONDITIONS OF COMMISSIONING AND REPRODUCTION OF PICTURES

1. TERMS:

In this Agreement the terms

- (a) 'picture' includes a photograph, transparency, negative, digital scan, digital image file, design, artwork, painting, montage drawing, engraving or any other item that may be offered for the purposes of reproduction.
- (b) 'reproduction' includes any form of publication or copying of the whole or part of any picture and whether or not altered by printing, photography, slide projection (whether or not to an audience) xerography, artist's reference, artist's illustration, layout or presentation, electronic or mechanical reproduction or storage by any other means.
- (c) 'context' includes the whole of any reproduction in which a picture is reproduced and specifically the surrounding, linked, editorial or explanatory text and/or other images.
- (d) 'the Client' is the person or organisation to whom the invoice is addressed (whether or not the Client is acting for a third party).
- (e) 'Karim Merie' includes Karim Merie as an individual, Karim Merie trading as KMPHOTOS / kmphotos.com and any other person or individual working with, for, or on behalf of him or KMPHOTOS / kmphotos.com.

2. COPYRIGHT:

- (a) The entire copyright in the pictures is retained Karim Merie at all times throughout the world.
- (b) Karim Merie supplies the technical and artistic ability to illustrate an idea photographically, and sells the right to reproduce those pictures in a given context. No property or copyright in any pictures shall pass to the Client whether on its submission or on Karim Merie grant of reproduction rights in respect thereof.
- (c) Karim Merie asserts both his moral right to be identified as the author of his work and the right to a credit is asserted in accordance with sections 77 and 78 of Copyright, Designs and Patents Act 1988.
- (d) Unless otherwise agreed in writing if any picture reproduced by the Client omits the copyright notice or credit line specified by Karim Merie any fee payable by the Client shall be subject to an increase specified by Karim Merie, and in any event an increase of not less than 25%.
- (e) Karim Merie reserves the absolute right to use copy of any reproduction resulting from commissioned work in portfolios of prior work produced by Karim Merie for the purpose of demonstrating abilities and obtaining future business by Karim Merie. Such use may be limited to the picture or may be reproduced in context of the final reproduction by the Client.

3. REPRODUCTION RIGHTS:

- (a) Reproduction rights (if and when granted) are strictly limited to the use and period of time specified on Karim Merie invoice. An agreement must be reached with Karim Merie before the pictures are used for a different purpose or after the licence to use has expired.
- (b) Reproduction rights are not issued exclusively to the Client except when specified on the invoice.
- (c) Reproduction rights granted are personal to the Client and may not be assigned, nor may any picture submitted to the Client be loaned or transferred to third parties save for the purpose of the exercise by the Client of such reproduction rights.
- (d) Any reproduction rights granted are by way of licence and no partial or other assignment of copyright shall be implied.
- (e) Karim Merie reserves the right to refuse to supply or grant a reproduction licence to a third party when requested to do so by the Client. [See also 5 Limitations:]

4. REPRODUCTION RIGHTS – SPECIFIC TERMS:

The following terms are used when describing the reproduction rights granted by Karim Merie to the Client:

- (a) Internal Use only: The right to use the pictures only within a company or partnership or organisation for non-commercial purposes; publication in a free in-house magazine not normally available to the public; exhibition within the Client's premises; editorial use in the Client's intranet site.
- (b) Commercial Use: The right to use the pictures as described in 4(a); plus a licence for use in the commercial activities and promotion of a specified company or partnership or organisation; publication in brochures, catalogues and magazines available to the public for advertising and trading purposes; publication in internet and intranet sites available to the public for advertising and trading purposes; exhibition at sites external to the Clients premises.
- (c) PR and Press distribution: The right to use the pictures as described in 4(a); plus a licence for third parties to reproduce such pictures in print or electronic media in an editorial context where no fee has been paid to guarantee publication.
- (d) Editorial: One reproduction only of pictures supplied within one print edition of the specified title in an editorial context only.
- (e) Charitable: Unlimited use, worldwide, for environmental, conservation or educational charities registered with the Charity Commission in England & Wales [Determined by provision of verified and current registered charity number] or other organisations approved at Karim Merie absolute and final discretion as having demonstrable non-profit, charitable or conservation ideals, aims, method and purpose.
- (f) Specified Use Only: The right to use the pictures once only for the purpose as described on the invoice.

5. LIMITATIONS:

- (a) Karim Merie is environmentally ethical and totally committed to the conservation and protection of the world including its flora, fauna and natural resources.
- (b) Reproduction of pictures in context deemed in Karim Merie sole discretion to be in any way contrary to these ideals will result in any reproduction rights previously granted, or in the process of being granted, being immediately rescinded without fear of penalty by Karim Merie.
- (c) Additional action may be taken to prevent this specific use, and any subsequent and/or unconnected use of other pictures originated by Karim Merie, by the Client. [See also 12(b)]

6. ORIGINAL TRANSPARENCIES AND PRINTS:

- (a) Risk in and responsibility for any original transparencies or prints passes to the Client from the time they are received until their safe return. The Client shall immediately inform Karim Merie in writing of any loss or misuse of, or damage to the pictures while in the Client's possession or that of any third party. If a picture is not returned within four weeks of the date for return then Karim Merie may in his sole discretion presume it to be lost.
- (b) The Client shall be liable to pay compensation to Karim Merie in respect of each picture lost or damaged. Payment of compensation does not give rise to any rights in any picture. Compensation levels for the pictures are available from Karim Merie upon request. These levels are a genuine pre-estimate of the loss that would be suffered if such a picture were to be lost or damaged. The Client is urged to request these figures and to take out insurance cover to cover the total value of the pictures delivered.

7. BOOKING & CANCELLATION:

- (a) Once the Client has made a booking for a specific time and date, Karim Merie will not accept any other work from other clients for those times and dates.
- (b) As a result, once a booking is made, if it is subsequently cancelled, a cancellation fee will be charged to the client according to the following schedule.
 - (i) When a client cancels photography within two weeks of any confirmed date, a fee of 25% of the booked time rate will be charged.
 - (ii) When a client cancels photography within one week of any confirmed date, a fee of 50% of the booked time rate will be charged.
 - (iii) When a client cancels photography within 48 hours of any confirmed date, a fee of 75% of the booked time rate will be charged.
 - (iv) When a client cancels photography within 24 hours of any confirmed date, a fee of 100% of the booked time rate will be charged.
 - (v) In addition to this cancellation fee, the client will be charged for any expenses already incurred by Karim Merie.

8. REPRODUCTION & INVOICING:

- (a) Until Karim Merie has invoiced the reproduction fee neither party is committed to grant or acquire any reproduction rights in any picture. After a fee has been agreed and an invoice issued there is a firm and binding contract for the Client to acquire them. If after such invoicing but before payment the Client requests cancellation of the reproduction rights Karim Merie may in his absolute discretion cancel subject to the Client paying a cancellation fee. [See Also 7(b)]
- (b) The Client's right to reproduce a picture arises only when Karim Merie invoice relating to the grant of such right is fully paid (including interest charges levied on late payment of the invoice or invoices). Any reproduction before payment of the invoice constitutes an infringement of rights and a breach of this Agreement entitling Karim Merie to rescind the Agreement and rendering the Client liable for the payment of damages.
- (c) Karim Merie invoice shall be paid within 30 days of issue.
- (d) If payment is not made in accordance with (c) above then Karim Merie may rescind this Agreement and recover damages, or, at his option, may exercise his statutory right to interest under the Late Payment Of Commercial Debts (Interest) Act 1998.
- (e) If any invoice issued to the Client is not paid by the Due Date, then all unpaid invoices issued to the Client become due of immediate effect, even if it is less than 30 days from the issue date, and that Karim Merie may consider these invoices as overdue when pursuing legal action for the recovery of said debts.
- (f) A fee of £15.50 will be made for each account reminder, duplicate invoice, or any other paperwork, correspondence or phone call involved with the pursual of a debt. This fee is non-refundable, and represents the additional time spent pursuing overdue invoices.
- (g) Additional charges will be made to an overdue invoice. These charges may vary due to the nature of the debt: for example, if reminders are sent out every two weeks instead of monthly. These charges for late payment do not constitute a right to pay an invoice after the Due Date.
- (h) Karim Merie reserves the right to suspend ongoing services, such as (but not limited to) the Downloadable Web Page or other distribution of pictures, once any invoice issued to a Client becomes overdue, and also reserves the right to inform the reason of this to third parties to whom this suspension of service affects.

9. DEATH & BANKRUPTCY:

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 is appointed Karim Merie may at any time thereafter inspect any records, accounts and books relating to the reproduction of his pictures to ensure that the pictures are being used only in accordance with the reproduction rights granted to the Client.

10. EDITING & REJECTION:

- (a) Karim Merie will edit every take and deliver what he considers to be the best of every situation covered. As a result, contact sheets (or their digital equivalent) will only be supplied to the client in exceptional circumstances.
- (b) No addition to, deletion from or alteration to or adaptation of a picture may be made without the written permission of Karim Merie.
- (c) Unless a rejection fee has been agreed in advance, there is no right to reject on the basis of content, style, composition or editing.

11. COPIES OF REPRODUCTION:

- (a) In the case of printed publication three copies of the entire publication containing any picture supplied are to be furnished Karim Merie free of charge before publication.
- (b) In the case of publication via the Internet, Intranet, digital media or any other electronic service or means full copy must be made available to Karim Merie before publication.

12. REASONABLE CARE & INDEMNITY:

- (a) While Karim Merie takes all reasonable care in the performance of this agreement generally, he shall not be liable for any loss or damage suffered by the Client or by any third party arising from use or reproduction by the Client of any picture or its caption.
- (b) The Client agrees to indemnify Karim Merie in respect of any claims or damages or any costs arising in any manner from the reproduction without proper reproduction rights of any picture supplied to the Client by Karim Merie.
- (c) It is the Client who must satisfy himself that all necessary rights, model releases or consents which may be required for reproduction, are obtained and it is acknowledged that Karim Merie gives no warranty or undertaking that any such rights, model releases or consents have 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. In the event that the picture issued or reproduced by or with the authority of the Client then the Client shall indemnify Karim Merie against any loss or damage, proceedings or costs where such rights, releases or consents have not been obtained.

13. PAYMENT:

- (a) Payment should normally be made by means of cash, bank transfer or crossed cheque made payable to "Karim Merie".
- (b) Proof of postage of remittances is not considered proof of receipt, and clients are advised to send payment by any method affording proof of delivery.

14. AGREEMENT & VARIATION:

- (a) Arrangement and request by Client of time and date for work to take place, whether written or verbal, is deemed to be full acceptance of quotation.
- (b) Acceptance of Karim Merie quotation by the Client confirms the Client's acceptance of these Terms and Conditions as the sole basis of determining the relationship thereafter.
- (c) No variation of terms and conditions set out herein shall be effective unless agreed in advance in writing by both parties.
- (d) Agreement shall be subject to and constructed according to English Law and the parties agree to accept the exclusive jurisdiction of the Courts of England & Wales.

15. ADDITIONAL INFORMATION SOURCES:

- Copyright, Designs and Patents Act 1988 -
http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm
- Late Payment Of Commercial Debts (Interest) Act 1998 -
<http://www.opsi.gov.uk/acts/acts1998/80020--b.htm>
- Charity Commission for England and Wales -
<http://www.charity-commission.gov.uk/index.asp>