

TERMS & CONDITIONS OF COMMISSIONING AND REPRODUCTION OF IMAGES

1. General

(a) These Terms and Conditions form part of the Agreement entered into between you and Aubrey Wade. You will be sent a copy with the request to sign and return it. Failure to do so does not prevent these Terms and Conditions forming part of the Agreement.

(b) In this Agreement the terms image and reproduction have the following meanings:

(i) image includes a photograph, transparency, negative, digital scan, design, artwork, painting, montage drawing, engraving or any other item or form that may be offered for the purposes of reproduction;

(ii) reproduction includes any form of publication or copying of the whole or part of any image and whether or not altered by printing, photography, slide or film or digital 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) From time to time Aubrey Wade may change the contents of his Terms and Conditions, prices, license terms, and other information and data. These changes will be made without prior notice to you. It is your responsibility to request the latest version.

(d) You agree that you accept these Terms and Conditions with the full knowledge that any liability of Aubrey Wade is limited and that the prices and charges payable to him have been calculated accordingly.

2. Copyright

(a) Aubrey Wade retains copyright in every image at all times throughout the world.

(b) Aubrey Wade will not agree to undertake editorial assignment work where the client wishes to subsequently hold the copyright.

(c) Aubrey Wade asserts both his moral right to be identified as the author of his work and the right to a credit being asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988. Unless otherwise expressly agreed in writing you must credit Aubrey Wade as specified every time an Image is used. If you fail to credit an Image an additional 50% of the original License Fee is payable without demand.

(d) Any publication right (as defined in the Copyright and Related Rights Regulations 1996) arising from your use of any image shall vest in Aubrey Wade and you hereby assign all such rights arising to Aubrey Wade.

3. License for use of images

(a) Your right to reproduce an Image arises only if (a) license terms are agreed and (b) the Invoice or copyright agreement relating to the use of the said Image is fully paid. Any reproduction before payment of the Invoice or outside the terms of any License constitutes an infringement of copyright and also a breach of the Agreement, and entitles Aubrey Wade to rescind the Agreement and claim damages.

(b) Until Aubrey Wade has invoiced the License Fee neither party is committed to grant or acquire any reproduction rights in any image. After a fee has been agreed and an Invoice issued there is a firm and binding contract whereby Aubrey Wade is committed to grant reproduction rights and you to acquire them. If after such invoicing but before payment you request cancellation of the reproduction rights Aubrey Wade may at his discretion agree to cancel subject to you paying a cancellation fee.

(c) Upon payment of the Invoice, including relevant Usage Fees, you may utilise the Image or Images licensed to you on a non-exclusive basis for the specific uses and purposes expressly stated on the Invoice and limited by these Terms and Conditions for the period of time stated on the Invoice. You must reach a new agreement with Aubrey Wade before any Image or Images are used for any other purpose or after the License has expired or you will be in breach of copyright.

(d) You shall not acquire any right, title or interest in or to any Image or Images including, but not limited to, any electronic reproduction or promotional rights, except as expressly set forth in the Invoice or Copyright License and these Terms and Conditions. You agree that you will not make, authorise or permit any use of the particular Image or Images, plate or plates, digital file or files, or other reproduction or reproductions made from any of Aubrey Wade's Images except as expressly specified in the Invoice or Copyright License. The License assigned to you is personal and may not be transferred to any third party. Aubrey Wade reserves the right to refuse to supply or grant a reproduction license to a third party if requested to do so.

(e) No Image shall be altered or manipulated, added to, or have any part deleted without the prior express written consent of Aubrey Wade.

(f) If the Image is used in a print publication you agree to send at your cost two 'tear sheets' containing the reproduction of the Image within 30 days of publication. In respect of other media alternative evidence of use must be provided if requested. Failure to supply tear sheets or such alternative evidence shall be considered to be a material breach of the Agreement.

(g) Any license granted will terminate immediately if you

- (a) die;
- (b) enter into voluntary or compulsory liquidation;
- (c) have a receiver appointed; or

(d) fail to perform any of your obligations under these Terms and Conditions within 28 days of notice to comply. In the event of termination, all rights granted revert immediately to Aubrey Wade and any further exploitation of any Image shall constitute an infringement of copyright.

(h) You must satisfy yourself that all necessary rights, model releases or consents that may be required for reproduction are obtained and it is acknowledged that Aubrey Wade 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 image. If the image is issued or reproduced by you or with your authority without such rights, releases or consents having been obtained you shall indemnify Aubrey Wade against any loss or damage, proceedings or costs in respect of such issuance or reproduction.

(i) You must indemnify Aubrey Wade fully in respect of any claim, damage, costs or expenses incurred and arising from any reproduction of any Image supplied to you.

4. Conditions of work assignment

(a) Once you have made a booking for a specific time and date, Aubrey Wade will not accept any other work from other clients for that time and date. Consequently, if a booking is subsequently cancelled, a cancellation fee will be charged according to the following schedule. When you cancel a booking within two weeks of any confirmed date, a fee of 50% of the booked time rate will be charged. When you cancel within one week of any confirmed date, a fee of 100% of the booked time rate will be charged. In addition to this cancellation fee, you will be charged for any expenses already incurred by Aubrey Wade.

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

(c) Risk in and responsibility for any original transparencies or prints passes to you from the time they are received until their safe return. You shall immediately inform Aubrey Wade in writing of any loss or misuse of, or damage to, any Image or Images while in your possession or that of any third party. If an Image is not returned within four weeks of the agreed date for return then Aubrey Wade may at his sole discretion presume it to be lost.

(d) You shall be liable to pay compensation to Aubrey Wade in respect of each Image lost or damaged. Payment of compensation does not give rise to any rights in any Image. Compensation levels for the Images are available from Aubrey Wade upon request. These levels are a genuine pre-estimate of the loss that would be suffered if an Image were to be lost or damaged. You are urged to request these figures and to take out insurance to cover the total value of the Images delivered.

5. Conditions of payment

(a) You must pay invoices within 28 days of issue.

(b) In addition to a penalty fee of £40.00 payable under the Late Payment of Commercial Debts (Interest) Act 1998, a fee of £15.00 will be made for each account reminder, duplicate invoice, or any other paperwork, correspondence or phone call involved with the pursuance of a debt. This administration fee is non-refundable, and represents the additional time spent pursuing overdue invoices.

(c) If any invoice issued to you is not paid by the due date, all unpaid invoices issued to you become due with immediate effect, even if less than 28 days have passed since the issue date. Aubrey Wade may consider these invoices as overdue when pursuing legal action for the recovery of any debt.

(d) If you do not pay in accordance with these terms, Aubrey Wade may at his option terminate this Agreement and claim damages, or charge interest at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the date payment was due until payment is made.

6. Miscellaneous

(a) Any failure by Aubrey Wade to exercise or enforce any of his rights will not be deemed to be a waiver of such rights nor bar their exercise or enforcement at any future date.

(b) Aubrey Wade shall take reasonable care in the performance of the Agreement and, except as provided in paragraph (e) below, he shall not be liable for any loss or damage suffered by you or by any third party arising from use or reproduction of any Image or its caption.

(c) Aubrey Wade neither gives nor agrees any other warranty or any other condition, representation or undertaking, either express or implied, of any nature, including in respect of merchantability, satisfactory quality, fitness for any particular use, or compatibility with any computer or other kind of equipment.

(d) Except as provided in paragraph (e) below, Aubrey Wade shall not be liable to you, or to any distributor or reseller, customer, end user or any other person, nor liable for any indirect, incidental, special or consequential damage (including loss of profit, business, revenue, goodwill or anticipated savings) resulting from the performance or non-performance of the Agreement, or the use of, or inability to use, the Content provided under the Agreement, or arising (or which might be claimed) under any other cause of action or theory of claim.

(e) The liability of Aubrey Wade in respect of any cause of action (whether arising in tort, contract or otherwise and notwithstanding any negligence or other fault) shall in no event exceed the sales value of the Content provided under the Agreement.

(f) The Agreement and these Terms and Conditions are governed by the laws of England and Wales and the parties agree to submit to the jurisdiction of the English courts, such jurisdiction to be exclusive, save for infringement of copyright or non-payment of any invoice where it will be non-exclusive.

Name:

Organisation:

Position:

Date: