

## Picture Show Ltd

Standard Photographic & Videography  
Terms & Conditions of Engagement



PICTURE SHOW  
photography | video | pictureshow.co.nz

### 1. INSTRUCTIONS MUST BE IN WRITING

1.1 The Client must ensure that all instructions and expectations regarding the Booking/Order (and any subsequent variations) are agreed in writing.

### 2. LICENCE GRANTED TO CLIENT

1. 2.1 Except as may be expressly provided in the Agreement, the copyright in all Works (Photographic and Videography) resulting from the Booking/Order remains the property of Picture Show. Picture Show does not accept commissions to create Photographic and Videography Works. These terms override section 21 (3) of the Copyright Act 1994.
2. The "Works" from heron in refers to the photographic and videography works created by Picture Show for the Client. Refer to definitions at end of terms and conditions.
3. 2.2 Picture Show grants the Client a non-exclusive Licence to use those parts of the Works selected by the Picture Show and presented to the Client. The Licence includes the right (if any) to reproduce and publish the Works for the purposes, territories and time periods specified in the Booking/Order, subject to these terms and conditions.  
The Client shall have the right to seek further Licences for use or reuse of any Works, which shall not be unreasonably refused by Picture Show but is subject to agreement of a reasonable fee for that Licence.
4. 2.3 If the Works have been produced for an Advertiser named in the Agreement, the Works may only be used by the Advertiser. The Client must ensure that the Advertiser complies with the Client's obligations and all other terms and conditions of the Agreement.
5. 2.4 The Client acknowledges that Picture Show always retains the right to use the Works in any manner at any time and in any part of the world for the purposes of:
  1. a Entering the Works into competitions or awards and for their use in any material published in connection with promoting those competitions or awards; and
  2. b Advertising or otherwise promoting Picture Show Work, including through the use of social media; and
  3. c Submitting the Works for display in art galleries or other premises; and
  4. d Using the Works for any other purpose within Picture Show business activities.

### 3. CONDITIONS OF LICENCE

1. 3.1 This Licence to use, and the right to use the Works commences from the date of supply and Picture Show reserves the right to claim payment up front.
2. 3.2 This Licence must not be assigned to any third party without Picture Show prior written permission (which shall not be unreasonably refused), but may be sublicensed by the Client to the Advertiser named in the Agreement (if any) on the same terms and conditions of this Licence (excluding any further right to sublicense).
3. 3.3 The Client is entitled to:

1. a Manipulate, distort or make other alterations to the Works (including overprinting by text or other Works), unless this right is expressly excluded in the Agreement; and
2. b Use only a portion of the Works.
4. 3.4 Copyright in any new Works created from any manipulation, alteration, distortion or overprinting of text of the licensed Works shall remain with Picture Show Ltd and shall be licensed to the Client on the same terms and conditions of the Agreement.
5. 3.5 Any breach of the Agreement by the Client (or by the Advertiser, with the Client's knowledge) which results in damage to the professional reputation of Picture Show, entitles Picture Show to compensation from the Client for that damage in addition to any other remedies available to Picture Show.

#### **4. ASSIGNMENT OF COPYRIGHT**

4.1 Where the Agreement specifies that copyright in the Works is assigned to the Client in consideration for the Client's payment for those Works:

1. a Picture Show assigns to the Client copyright in the Works from the date of full payment of all amounts owed to Picture Show in relation to the Works and the Agreement;
2. b It is the responsibility of the Client to obtain all model releases, moral right waivers and privacy waivers necessary for the use of the Works;
3. c The Client agrees to indemnify Picture Show in respect of any loss, claims, damages or expenses (including costs incurred on a solicitor client basis) incurred by Picture Show arising from any use of the Works; and
4. d Picture Show retains the rights described in clause 2.4 and clause 5 of these terms and conditions.

#### **5. MORAL RIGHTS**

1. 5.1 Picture Show asserts moral rights, including attribution rights, in respect of the Works (unless expressly waived in the Agreement in writing). Each use of any Work by the Client, including where the Client publishes or otherwise uses the Works on social media, must be accompanied by an adjacent credit line acknowledging the Photographer's name and copyright in the Works in the form specified in the Agreement, or if not so specified, then in a form approved in writing by Picture Show.

#### **6. DATA PRESERVATION**

6.1 The Client's right to use the Works under the Licence does not include the right to remove, alter or otherwise affect any rights information accompanying or relating to the Works, including (without limitation) any notices or metadata accompanying or part of the Works recording creator details, copyright ownership or publication status of the Works. The Client shall not alter or remove any notices attached to the Works and shall take all reasonable steps to respect and preserve Picture Show's copyright and other rights. Where Picture Show has placed restrictions on access to or use of the Works, the Client shall not defeat (or attempt to defeat) such restrictions.

#### **7. STORAGE AND BACKUPS**

7.1 The Client acknowledges that the Client is responsible for the storage and backup of the Works supplied by the Photographer. While Picture Show will follow its usual backup procedures (if any) upon delivery of the Works, Picture Show shall not be liable under any circumstances if unable to produce backups or future reproductions of the Works upon the

request of the Client. Where backups are available, these may be made available to the Client for a fee.

## **8. PRIVACY AND PERSONAL INFORMATION**

1. 8.1 As part of creating the Works, Picture Show may collect and retain personal information about the Client. The personal information may be used by Picture Show for communicating with the Client for any purpose relating to the Works (including arranging third party services), direct marketing and in connection with these terms and conditions.
2. 8.2 The Client authorizes Picture Show to collect, retain, use personal information for these purposes (including assessing credit worthiness), and to disclose that information to any person or entity for these purposes.
3. 8.3 Personal information collected by Picture Show shall be retained in the Photographer's database. The Client may access and request correction of any of the Client's personal information by contacting Picture Show.
4. 8.4 Where section 105 of the Copyright Act 1994 applies, Picture Show shall obtain any necessary consent in accordance with section 107 of that Act, provided however that the Client agrees that Picture Show has the rights described in clause 2.4 unless those rights are expressly excluded in the Booking/Order.

## **9. PAYMENT**

9.1 The Client shall pay Picture Show the various amounts payable in accordance with the Booking/Order and the Agreement. If the fee and expenses are not estimated in advance, or for any goods or services different or additional to the Booking/Order, then the Client shall pay the amount invoiced by Picture Show in accordance with the Photographer's Price List. Picture Show may require a deposit or payment of part or all of the amounts due in advance. Unless otherwise specified in the Agreement, payment of all other amounts are due within 7 days of invoice or the 20<sup>th</sup> month depending on the invoice requirements.

## **10. JOB-RELATED COSTS**

1. 10.1 The Client shall reimburse the Photographer for all Job-Related Costs. Where the Photographer makes payment to others on behalf of the Client, the Photographer may add a service charge or commission, determined at the Photographer's absolute discretion. Unless otherwise specified in the Agreement, the Client must pay all Job-Related Costs and service charges/ commissions Picture Show. The Client is not entitled to any property in:
  1. a Any artistic works or other materials created or supplied by the Picture Show to support the Works; or
  2. b Any materials used for the creation of an artistic work, which are commissioned or arranged by the Picture Show; or
  3. c Any goods used in supporting the Works
2. 10.2 Such goods, materials, authored or artistic works shall remain the property of Picture Show, unless otherwise specified in the Agreement.

## **11. URGENT WORK**

11.1 Where the Client requires Photographic Works on an urgent basis (which includes where Picture Show is unable to re-shoot or correct a shot because of an urgent deadline) Picture Show will not be liable for any losses or damages arising out of the inability to carry out a re-shoot or the costs of arranging a re-shoot.

## **12. CHANGES TO THE ESTIMATE**

12.1 Estimates of fees and Job-Related Costs are estimates and not firm quotations and are liable to alteration. Picture Show must bring any increase to the estimate, of 10% or more, to the attention of the Client. Any change to the job specifications made or agreed by the Client may alter the fees and Job-Related Costs.

### **13. OVERDUE PAYMENTS**

13.1 In the event that any monies are not paid in full on the due date, Picture Show shall be entitled to:

1. a Charge interest at a rate of 2.5% per month or part month overdue on any amounts outstanding;
2. b Recover any debt collection costs and related legal expenses (on a solicitor-client basis); and
3. c Suspend any further work until all amounts owing and any costs incurred are paid in full.

### **14. CANCELLATION**

1. 14.1 When a Booking/Order is confirmed by the Client, the Client becomes liable for payment to Picture Show and the Photographer becomes liable to complete the shoot.
2. 14.2 Cancellation of the Booking/Order by the Client must be in writing and must give reasonable notice to the Picture Show. Subject to any specific terms in the Agreement, if the Client cancels the Booking/Order:
  1. a Within 1 working day of the booked shoot day, the Client must pay a fee of 100% of Picture Shows fees
  2. b Giving notice of cancellation of greater than 1 working day and within 3 working days of the booked shoot day, the Client must pay a fee of 50% of the Picture Show's fees.
  3. d The Client must pay Picture Show for all Job-Related Costs incurred.
3. 14.3 The Client acknowledges and agrees that these cancellation fees fairly reflect the loss suffered by Picture Show and the ability to re-schedule work and re-allocate resources, depending upon the amount of notice given.

### **15. POSTPONEMENT**

15.1 Subject to any specific terms in the Agreement, if the Client postpones or changes the date of the Booking/Order, except for reasons of weather being unsuitable, the following shall apply:

1. a Within 1 working day of the booked shoot day, the Client must pay a fee of 50% of Picture Show's daily fee for each day which is postponed.
2. b With more than 1 working days' notice, the Client must pay a fee of 25% of Picture Show's daily fee for each day which is postponed.
3. c The Client must pay Picture Show for all Job-Related Costs incurred.

15.2 The Client acknowledges and agrees that these cancellation fees fairly reflect the loss suffered by the Picture Show and the ability to re-schedule work and re-allocate resources, depending upon the amount of notice given.

### **16. WEATHER CONDITIONS**

16.1 A weather-permitting booking must be agreed between the Client and Picture Show prior to the shoot. Upon postponement of a shoot due to bad weather, Picture Show will not charge any additional fee and the rescheduled date will be at the discretion of Picture Show fitting in with other booked assignments.

## **17. WORK SUSPENDED ON CLIENT'S INSTRUCTIONS**

17.1 Where the Client instructs that work is to be suspended for a period of 30 days or more, the Client must, at the time of suspension, pay the Photographer for all work in progress and any Job-Related Costs incurred at that time.

## **18. RESPONSIBILITY FOR CONTRACTORS**

1. 18.1 The Client is responsible for making all payments (including rollover fees) and fulfilling all other obligations to contractors.
2. 18.2 Where contractors are models, the Client is responsible for obtaining all necessary model releases. To ensure proper recording of others' intellectual property rights, which may be part of the Works, the Client shall, on a request by Picture Show, provide evidence of these model releases to Picture Show.
3. 18.3 Where the Client requests Picture Show to engage contractors, Picture Show shall do so as agent for the Client and the Client indemnifies Picture Show against all costs, disbursements and other obligations arising from that agency.

## **19. CLIENT PROPERTY AND MATERIALS**

1. 19.1 Client property and all property and material supplied to Picture Show by or on behalf of the Client is held at the Client's risk and Picture Show accepts no responsibility for the maintenance or insurance of that property or material.
2. 19.2 The Client must pay any sum charged or incurred by Picture Show for handling or storing property or material supplied by or on behalf of the Client.
3. 19.3 Where property and materials are left with Picture Show without specific instructions, Picture Show may dispose of them at the end of six months from the date of receiving them and retain the proceeds.

## **20. CLIENT CONFIDENTIALITY**

20.1 The Client must advise Picture Show as to whether any material or information supplied is of a confidential nature. Picture Show will keep that material or information confidential, except where disclosure is reasonably necessary to enable Picture Show to perform the Agreement.

## **21. INDEMNITY**

1. 21.1 The Client undertakes to indemnify Picture Show for any loss, claim, damage, or expense (including costs incurred on a solicitor client basis) suffered or incurred as a result of:
  1. a Any breach by the Client of the Agreement;
  2. b Any illegal or defamatory Works produced for the Client;
  3. c Any infringement of an intellectual property right of any person; or
  4. d In recovering any moneys due.
2. 21.2 Such loss, claim, damage or expense shall be moneys due for the purposes of these terms and conditions.
3. 21.3 The Client is responsible for obtaining any authorisation, clearance, licence or other form of approval necessary for the lawful use of third party intellectual property works.

## **22. COLOUR VARIATION**

22.1 The Client releases Picture Show from any and all liability relating to colour reproduction of supplied works on any system not under the direct control of Picture Show. Where Picture Show supplies the Client with photographic prints, the Client acknowledges that Photographic Works may fade or discolour over time due to the inherent qualities of materials used, and releases Picture Show from any liability for any claim based upon fading

or discolouration. Where a colour is unable to be reproduced accurately due to limitations in capture and output technology, the Client releases Picture Show from any and all liability in regard to colour reproduction.

### **23. QUALITY OF PHOTOGRAPHIC WORKS**

1. 23.1 Where Works are not of an acceptable technical quality, making it unfit for the purpose of its specified use, then no fee or Job-Related Costs are due to the Picture Show. Picture Show has the right to rectify the defect within a reasonable time, having regard to the urgency of the Work. If rectified, Picture Show is entitled to be paid the full fee and Job-Related Costs, but may not charge the Client any extra fee or cost for rectifying the defect.
2. 23.2 Where there is a representative of the Client at the shoot, the representative is responsible for the direction of the Work. Acceptance of the work by this representative is confirmation that Picture Show has satisfied the artistic quality and interpretation requirements of the shoot. If the representative is not at the shoot then Picture Show's judgement is absolute within the limits (if any) imposed by any documented agreements on the nature of the intended work.
3. 23.3 If Picture Show produces Works that are in the same style and structure as their past work (by reference to Picture Show's portfolio), the Client is deemed to have accepted Picture Show's artistic interpretation.
4. 23.4 If there is a dispute as to artistic interpretation, which is unresolved after good faith discussions between Picture Show and the Client, and where Picture Show is a member of a recognised photographic association or society, the chief executive (or equivalent) of that association or society shall determine the dispute. That decision shall be final and binding.

### **24. CONSUMER GUARANTEES ACT 1993**

1. 24.1 The Consumer Guarantees Act 1993 may apply to the Works provided by the Picture Show, if the Client acquires those Works for personal, domestic or household use or consumption. If this Act applies, nothing in the Agreement will limit or exclude the Client's rights under this Act.
2. 24.2 If the Client is acquiring the Works for business or trade purposes, then the Client's rights are subject to the Agreement only and the Consumer Guarantees Act 1993 shall not apply.

### **25. PHOTOGRAPHER NOT LIABLE FOR LOSSES**

25.1 Except as provided by the Consumer Guarantees Act 1993, the Picture Show shall not be liable for:

- a Any loss or damage arising by reason of any delay in the completion of the Works; or
- b Any loss of profits or revenues; or
- c Any indirect or consequential loss of whatever nature; or
- d Any loss resulting from any errors or omissions arising from an oversight or a misinterpretation of a Client's verbal instructions.

### **26. LIABILITY OF PHOTOGRAPHER LIMITED**

26.1 Subject to clause 24, Picture Show's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or connected with the performance or failure of performance of any Works or photographic services supplied by them, shall not exceed the full value of the payments made by the Client under the Agreement.

### **27. HEALTH AND SAFETY**

27.1 The Client acknowledges and agrees that the Client is responsible for, and shall take all reasonably necessary steps to ensure, its own personal safety and that no action or inaction of the Client causes harm or risk to the health and safety of others. Notwithstanding the above, the Client agrees to comply with any reasonable health and safety directions given by Picture Show.

## **28. FORCE MAJEURE**

28.1 Except for an obligation to pay money, neither the Client nor Picture Show shall be liable for any act, omission or failure to fulfil its obligations, or any loss or damage arising directly or indirectly due to an act of God, explosion, fire, flood, storm, earthquake, subsidence, armed conflict, strike, lockout or labour disputes, civil commotion, intervention of a government, accidents, electrical, heat, light or telecommunication failures, interruption to transportation, weather or any other cause outside Picture Show's control.

## **29. DISPUTE RESOLUTION**

1. 29.1 Picture Show and the Client agree to use their best efforts to resolve any dispute which arises through good faith negotiations.
2. 29.2 Either party may raise a dispute by written notice to the other party. Within 3 working days of receipt of a dispute notice, the parties shall meet (or otherwise communicate if meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis.
3. 29.3 Neither party may commence any litigation in relation to the dispute unless 14 days have passed since the parties met (or otherwise communicated) and endeavoured in good faith to resolve the dispute on mutually acceptable terms.

## **30. CONFLICTS**

30.1 In the event of a conflict or inconsistency between these terms and conditions and the Booking/Order, the Booking/Order shall prevail.

## **31. GOVERNING LAW**

31.1 These terms and conditions are governed by, and to be construed in accordance with New Zealand Law. The Client irrevocably submits to the exclusive jurisdiction of the New Zealand courts.

## **32. ENTIRE AGREEMENT**

1. 32.1 The Booking/Order, together with these standard terms and conditions and any other special conditions agreed in writing between the parties, shall constitute the entire Agreement between the parties.
2. 32.2 Each Booking/Order made by the Client shall (together with these standard terms and conditions and any other special conditions agreed in writing between the parties) constitute a separate Agreement between the parties.

## **DEFINITIONS**

For the purposes of the Agreement, the following definitions shall apply unless the context requires otherwise:

**Advertiser:** means the end user of the Photographic Works where the Photographer is engaged to produce the Photographic Works by an advertising agency, design firm, or other intermediary.

**Agreement:** means the Booking/Order, together with these standard terms and conditions and any other special conditions agreed in writing between the parties.

**Booking/Order:** means an order or request by the Client for the production, supply or viewing of Photographic Works, including (without limitation) bookings, orders, quotes,

estimates, proposals, and appointments made for a shoot, sitting or viewing.

**Client:** means the person or entity listed on the Booking/Order who engages or instructs the Photographer to produce Photographic Works.

**Job-Related Costs:** means any costs and expenses incurred by the Photographer on the Client's behalf in providing photographic services or in the creation of the Photographic Works.

**Licence:** is a right granted by the Photographer to the Client to use the copyright works of the Photographer on the terms set out above.

**Photographic Works:** means the deliverable works specified in the Booking/ Order and created or supplied by the Photographer, including photographs, photographic prints, moving images (video), transparencies, negatives, digital files, and images in any form or medium.

**Photographer:** means the photographer (Picture Show Ltd) and where the context requires may include, the studio, photographic company, employees or sub-contractors. **Price List:** means the Photographer's list or schedule of prices for goods and services at the date of the Agreement.

