

OVER X PHOTOGRAPHY

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Terms and Conditions of Photography & Services

1. DEFINITIONS: This Agreement is by and between Over X Photography ("Licensor") and the "Client" named on the front of this Agreement. "Image(s)" means the visual and/or other forms of film, prints, slides, chromes, and any other visual materials in any format including digital information supplied by Licensor to Client. Licensor is the sole creator of the Image(s). "Service(s)" means the photography and/or related digital or other related services described on the front of this Agreement that Client is specifically commissioning Licensor to perform pursuant to this Agreement. "Transmit" or "Transmission" means distribution by any device or process whereby an Image or copy of same, is fixed beyond the place from which it was sent. "Copyright Management Information" means the name and other identifying information of Licensor, terms and conditions for uses of the Images, and such other information that Licensor may prescribe.

2. FEES, CHARGES AND ADVANCES: Client and Client's representatives are jointly and severally responsible for full payment of all fees, charges, expenses and advances. The rights licensed, fees, charges and advances set forth in this Agreement apply only to the original specification of the Services. Additional fees and charges shall be paid by Client for any subsequent changes, additions or variations requested by Client. All advance payments are due in full prior to production.

3. POSTPONEMENTS AND CANCELLATIONS: If Client postpones or cancels any photography "shoot date" or other Service, in whole or in part, without first obtaining Licensor's written consent, Client shall pay Licensor 50% of Licensor's quoted fees. If Client postpones or cancels with less than two business days' prior written notice to Licensor, Client shall pay 100% of Licensor's quoted fees. Client shall in any event pay all expenses and charges incurred in connection with any postponed or cancelled shoot date or other Service.

4. FORCE MAJEURE: Licensor shall not be in default of this Agreement by reason of its delay in the performance of or failure to perform, in whole or in part, any of its obligations hereunder, if such delay or failure results from occurrences beyond its reasonable control and without its fault or negligence. Client will pay 100% of Licensor's daily weather delay fee (as set forth on the front of this Agreement) for any delays due to weather conditions or any acts or occurrences beyond Licensor's reasonable control, plus all charges incurred.

5. CLIENT APPROVAL: Client is responsible for having its authorized representative present during all "shooting" and other appropriate phases of the Service(s) to approve Licensor's interpretation of the Service(s). If no representative is present, Licensor's interpretation shall be deemed as "accepted". Client shall be bound by all approvals and job changes made by Client's representatives.

6. OVERTIME: In the event any Services extend beyond eight consecutive hours in one day, Client agrees to and shall timely pay overtime for crew members and assistants at the rate of 1-1/2 times their hourly rates or fees, and if the Services extend beyond 12 hours in one day, Client agrees to and shall pay overtime for crew members and assistants at the rate of double their regularly hourly rates or fees.

7. RESHOOTS: Client shall pay 100% of Licensor's fees and charges for any reshooting or redoing of Services requested by Client. If the Image(s) become lost or unusable by reason of defects, damage, equipment malfunction, processing, or any other technical error, prior to delivery of the Image(s) to Client, Licensor will perform appropriate Service(s) again without additional fees, provided Client advances and pays all charges, and pays all fees and charges in connection with the initial Service.

8. LIMITATION OF LIABILITY AND INDEMNITY: Even if Client's exclusive remedy fails of its essential purpose, Licensor's entire liability shall in no event exceed the license fee paid to Licensor. UNDER NO CIRCUMSTANCES SHALL LICENSOR BE LIABLE FOR GENERAL, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING FROM THIS AGREEMENT, THE SERVICE(S), THE IMAGE(S) OR ANY ACTS OR OMISSIONS OF LICENSOR. Client shall indemnify, defend and hold Licensor and Licensor's representatives harmless from any and all claims, liabilities, damages, and expenses of any nature whatsoever, including actual attorneys' fees, costs of investigation, court costs and any other expenses or costs arising from or relating to Client's direct or indirect use of the Image(s) or in connection with Licensor's reliance on any representations, instructions, information, or materials provided or approved by Client.

9. RIGHTS LICENSED: The licensed rights are transferred only upon: (a) Client's acceptance of all terms contained in this Agreement, (b) Licensor's receipt of full payment, and (c) the use of proper copyright notice and other Copyright Management Information requested or used by Licensor in connection with the Image(s). Licensor is willing to license the Image(s) to Client only upon the condition that Client accepts all of the terms of this Agreement. Unless otherwise specifically stated on the front of this Agreement, all licenses are non-exclusive, the duration of any license is one year from the date of Licensor's invoice and is for English language use in the United States of America only. Licensor reserves all rights in the Image(s) of every kind and nature, including, without limitation, copyright, electronic publishing and use rights, in any and all media, throughout the world, now existing and yet unknown, that are not specifically licensed or transferred by this Agreement. No license is valid unless signed by Licensor. This Agreement may not be assigned or transferred without the prior written consent of Licensor and provided that the assignee or transferee agrees in writing to be bound by all of the terms, conditions, and obligations of this Agreement. Any voluntary assignment or assignments by operation of law of any rights or obligations of Client shall be deemed a default under this Agreement allowing Licensor to exercise all remedies including, without limitation, terminating this Agreement, the right to all net worth or financial information of any assignee and the fullest extent of adequate assurances of future performance. Upon request by Licensor Client shall provide Licensor with a full and complete disclosure of any and all uses of each Image and provide Licensor with two (2) copies, without charge, of each and every use of each Image.

10. RETURN OF ANALOG IMAGE(S): Client assumes all risk for all Image(s) supplied by Licensor to Client, from the time of Client's receipt, to the time of the safe return receipt of the Image(s) to the possession and control of Licensor. If no return date appears on the front of this Agreement or on any related delivery memo, Client shall return all Image(s) in undamaged, unaltered and untouched condition not later than 90 days after the date of delivery date unless otherwise agreed in writing. Client acknowledges that the failure to turn any image(s) to Licensor within the agreed upon time period(s) will cause economic damage to Licensor. Client agrees to pay the sum of \$ ___ per week per image (irrespective of the total number of images unreturned) and for a "holding fee". Client acknowledges that such calculation is fair and reasonable and bears a rational relationship to the damages, lost income, costs and expenses incurred by Licensor as a result of such failure. In the event an image is not returned to Licensor within ___ of delivery to Client, such images shall be deemed "lost" and Client shall pay to Licensor damages in accordance with paragraph "12" herein. Notwithstanding, Licensor may assert a claim for lost or unreturned images at any time subsequent to the agreed upon return date(s).

11. LOSS OR DAMAGE: IN CASE OF LOSS OR DAMAGE OF ANY ORIGINAL IMAGE(S), CLIENT AND LICENSOR AGREE THAT THE REASONABLE VALUE OF EACH ORIGINAL IMAGE IS AS SET FORTH ON THE FRONT PAGE OF THIS AGREEMENT. Once original Image(s) are lost or damaged the parties acknowledge it is extremely difficult, costly, impracticable and possibly impossible to fix their exact individual value in a court of law. Accordingly, Licensor and Client agree that the reasonable liquidated value of each original Image is in such amounts as are set forth on the front of this Agreement. Client agrees to pay Licensor such enumerated amount(s) for each lost or damaged original Image (irrespective of the total number of images lost or damaged) and Licensor agrees to limit Licensor's claim to that amount without regard to any claimed actual value of such Image. An Image shall be considered original if no high reproduction quality duplicate of that Image exists. Client specifically agrees that the amount(s) set forth on the front of this Agreement are reasonable, reasonably related to the value of the image(s). Both parties have duly considered or have had ample opportunity to assess the number of images covered by this agreement as well as their content, subject matter, historical or newsworthy significance, reputation of the Licensor, cost of creation, any existing model and/or property releases, market cost of comparable images (if any) and other business considerations to be considered including but not limited to the ability or lack thereof to recreate any such lost image and whether the subject images can, in fact, be recreated. The parties agree that the damage provisions agreed upon herein is not/are not punitive and that the establishment of such clause and amount is in the mutually beneficial economic interest of both the Client and Licensor in the event of loss or damage to any/all images. Client's agreement to these terms serves as a material inducement to licensor to deliver to Client the requested analog images.

12. DELETION OF DIGITAL IMAGE(S): For all images supplied in digital format, Client agrees to delete all such images 90 days after their delivery date unless a longer retention period is agreed to in writing. In the event client loses, fails to timely locate, or renders a digital image unusable, Client agrees to pay Licensor all fees and expenses charged by Licensor to re-transmit or otherwise redeliver such image(s).

13. PAYMENT AND COLLECTION TERMS: Invoices from Licensor are payable upon receipt by Client. Client agrees to pay a late payment fee equal to 1.5% per month on any unpaid amount or balance. Such late fees shall commence to run thirty (30) days after the mailing date of this invoice. Such late fee(s) shall in no event exceed the lawful maximum permitted in the State of ___ with respect to commercial transactions of this type. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover their actual attorneys' fees, court costs and all other non-reimbursable litigation expenses such as expert witness fees and investigation expenses. The parties hereto consent to the jurisdiction of the courts of the Commonwealth of Pennsylvania County of Northampton. The parties agree that any dispute arising out of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

14. TAX: Client shall pay and hold Licensor harmless on account of any sales, use, or other taxes or governmental charges of any kind, however denominated, imposed by any government, including any subsequent assessments, in connection with this Agreement, the Image(s), the Service(s) or any income earned or payments received by Licensor hereunder. To the extent that Licensor may be required to withhold or pay such taxes Client shall promptly thereafter furnish Licensor with funds in the full amount of all the sums withheld or paid.

15. RELEASES: NO MODEL, PROPERTY, TRADEMARK, OR OTHER SUCH RELEASE EXISTS FOR ANY IMAGE(S) UNLESS LICENSOR SUBMITS TO CLIENT A SEPARATE RELEASE SIGNED BY A THIRD-PARTY MODEL OR PROPERTY OWNER.

16. ELECTRONIC RIGHTS: No electronic usage rights of any kind are licensed or granted hereunder unless specifically set forth on the front of this Agreement. Licensor specifically reserves all rights not specifically conveyed to Client hereunder. Such rights reserved include but are not limited to all rights of publication, distribution, display or Transmission in electronic and digital media of any kind, now existing and yet unknown. Usage rights for any kind of revision of a collective work including any later collective work in the same series are expressly reserved by the Licensor.

17. MODIFICATIONS, GOVERNING LAW AND MISCELLANEOUS: This Agreement sets forth the entire understanding and agreement between Licensor and Client regarding the Service(s) and/or the Image(s). This Agreement supersedes any and all prior representations and agreements regarding the Service(s) and/or the Image(s), whether written or verbal. Neither Licensor nor Client shall be bound by any purchase order, term, condition, representation, warranty or provision other than as specifically stated in this Agreement. No waiver or modification may be made to any term or condition contained in this Agreement unless in writing and signed by Licensor. Waiver of any one provision of this Agreement shall not be deemed to be a waiver of any other provision of this Agreement. Any objections to the terms of this Agreement must be made in writing and delivered to Licensor within ten days of the receipt of this Agreement by Client or Client's representative, or this Agreement shall be binding. Notwithstanding anything to the contrary, no Image(s) may be used in any manner without Licensor's prior written consent, and Client's holding of any Image(s) constitutes Client's complete acceptance of this Agreement. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania excluding the conflict of laws rules of the United States of America. All paragraph captions in this Agreement are for reference only, and shall not be considered in construing this Agreement. This Agreement shall be construed in accordance with its terms and shall not be construed more favorably for or more strongly against Licensor or Client.

18. COPYRIGHT/ENFORCEMENT OF EXCLUSIVE LICENSE:

The sole right to pursue and/or defend any and all claims sounding in infringement of its copyright(s), trademark and/or intellectual property rights in the image(s), free from any claims by Client or any other person, whether or not the rights granted to Client or exclusive or non-exclusive shall be deemed retained by Licensor. If Licensor is determined not to possess such rights Client agrees to execute and deliver to Licensor such documents as Licensor reasonably requests to carry out the purpose of this clause to allow Licensor the right to pursue and/or defend any and all claims sounding in infringement of its copyright(s), trademark and/or intellectual property rights in the image(s).

(Name) Date
Photographer/Licensor

(Name) Title Date
Client/Licensee