



seeing is believing

2009

**COMMERCIAL PHOTOGRAPHY & IMAGE CREATION
TERMS AND CONDITIONS OF SERVICE**

LONGBRIDGE MEADOW, CULLOMPTON, DEVON. EX15 1BT

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www.BDiPhoto.co.uk

1. TERMS AND CONDITIONS

1.1 These terms and conditions together with the order information you agree with us will form a binding contract between **BDi (GB) Ltd** ("**BDiPhoto**") and the **Client** who orders photographic services from **BDiPhoto** ("**Client**") and which shall constitute the entire agreement between **Client** and **BDiPhoto** and apply to any trading agreement or other contract or arrangement between **Client** and **BDiPhoto**;

1.2 These terms apply to the exclusion of all other terms or conditions of contract the **Client** may propose and shall not be varied unless agreed in writing and signed by **BDiPhoto**.

2. DEFINITIONS

2.1 For the purposes of this agreement, the following expressions shall have the following meanings:

"*Client Content*" shall mean all materials and 3rd party services provided by the **Client** to **BDiPhoto** for inclusion or incorporation into the Photographs or to be used in conjunction with the Photographs.

"*The Fees*" shall mean the rate of payment for the provision of photographic services by **BDiPhoto** to **Client** as is communicated to the Client either through the website of **BDiPhoto** or by any other means. The Fees shall include any third party Fees payable in the creation of the Photographs.

"*The Delivery Date*" shall mean the date agreed by the **Client** and **BDiPhoto** for delivery of the Photographs.

"*The Photographs*" shall mean the photographic works requested by the **Client** and supplied by the **BDiPhoto** in accordance with this agreement.

"*The Shoot Date*" shall mean the date agreed by **BDiPhoto** and the **Client** upon which the Photographs will be created.

"*Total Fees Estimate*" shall mean any estimate of the fees for undertaking photographic works given to the **Client** by the **BDiPhoto**.

3. BDIPHOTO

3.1 In consideration of the payment by the **Client** to **BDiPhoto** of the Fees, **BDiPhoto** agrees on the Shoot Date, to create the Photographs in accordance with the Proposal (where such item exists), with reasonable and due care in accordance with and subject to these terms.

3.2 **BDiPhoto** undertakes that the Photographs shall be faithful to the basic conceptualisation of the underlying works, pitch or proposal and reflect the same standards of quality and integrity.

4. CLIENT

4.1 The **Client** will co-operate with and act in good faith towards **BDiPhoto** and provide on request such source materials as are required to create the Photographs ("**Client Content**") as **BDiPhoto** is to incorporate into the Photographs or that which **BDiPhoto** require to carry out its obligations hereunder.

5. PAYMENT

5.1 The **Client** shall pay **BDiPhoto** the Fees without deduction or setoff (with VAT thereon where applicable) within 21 days of receipt of a valid invoice.

5.2 The **Client** shall provide **BDiPhoto** with all such information and material as it may reasonably request for the purpose of generating a valid invoice for payment of the Fees, including, where required, the provision of purchase order references within the period of two (2) days following the Shoot Date.

5.3 Any Total Fees Estimate communicated to the **Client** by **BDiPhoto** is an estimate only. The Fees shall be set on the basis set out from time to time on the website of **BDiPhoto** and may be less than, or more than, the Total Fees Estimate.

5.4 **BDiPhoto** may charge additional Fees in accordance with its then prevailing rates in the event of:

5.4.1 delays or additional works caused or required by the **Client** including those resulting from its failure to properly provide **BDiPhoto** with such information, Client Content, instructions, media or approvals as are reasonably required for the supply of the Photographs;

5.4.2 changes to the cost of labour, materials, services and other circumstances outside of **BDiPhoto**'s reasonable control.

5.4.3 the **Client** requiring the supply of Photographs, goods and services in addition to those requested or any variations to the Photographs;

5.4.4 agreed third party expenses.

5.5 In the event that the **Client** requires any change or alteration to the Photographs ("Change"), **BDiPhoto** and the **Client** shall, prior to such change being effective or implemented, agree:

5.5.1 the nature of the Change;

5.5.2 the procedures for implementation of such Change; and

5.5.3 the variation to the Fees.

5.6 Until any Change is formally agreed between the **Client** and **BDiPhoto**, **BDiPhoto** will continue to perform and be paid for the Photographs as if the Change had not been proposed, unless otherwise requested by the **Client**.

5.7 All and any Changes to the Photographs shall be reflected and accompanied by appropriate amendments to the Fees.

5.8 **BDiPhoto** shall be entitled to charge interest on any overdue payment at the rate of 4% over base rate of HSBC at the time.

6. INTELLECTUAL PROPERTY RIGHTS / CONFIDENTIALITY

6.1 All copyright, design right, registered designs, trade marks, patents, database rights and confidential information and ideas and all other rights whatsoever of a like nature world wide whether registered or not of whatever nature in material devised, created or commissioned by **BDiPhoto**, in supplying the Photographs and under this Agreement will vest in and belong to **BDiPhoto** unless otherwise agreed in writing and signed by both Parties. **BDiPhoto** may include within the Photographs reasonable copyright notice and credit.

6.2 **BDiPhoto** hereby grants the **Client** a perpetual, royalty-free, sole license to use, copy and otherwise deal in the Photographs, with such license being conditional upon receipt by **BDiPhoto** of the Fees in accordance with clause 5 above. In the event that the Fees are not paid in accordance with clause 5 above, or if the **Client** rejects the Photographs in accordance with clause 7.5 below, the licence granted in this clause 6.2 will be deemed to be terminated - any subsequent use of the photographs will be subject to the tariff of unauthorised usage fees as set out from time to time on the website of **BDiPhoto** and available in writing on request.

6.3 The licence granted in clause 6.2 above shall apply only to the visual image contained within the Photographs which **BDiPhoto** is specifically requested to proceed with and not to any original ideas, concepts or proposals of **BDiPhoto** pitched or suggested to the **Client**, all of which shall be retained by **BDiPhoto**.

6.4 **BDiPhoto** shall use reasonable commercial endeavours to obtain the **Client's** approval for the copying or use of the Photographs otherwise than as stipulated under this agreement. In the event that the **Client** is contacted with such a request, the approval requested may be withheld by **Client** on reasonable grounds. In the event that **BDiPhoto's** commercial endeavours to contact the **Client** are unsuccessful or if the approval for use of the Photographs by **BDiPhoto** is withheld without the **Client** setting out reasonable grounds for withholding that approval, **BDiPhoto** shall be entitled to use the Photographs without further reference to the **Client**. Nothing in this clause 6.4 shall give **BDiPhoto** any right to grant further licences to use the Photographs in relation to any third party.

6.5 The **Client** grants **BDiPhoto** a non-exclusive royalty free licence to use the Client Content for all purposes relating to this Agreement and warrants that it is fully entitled to grant **BDiPhoto** these rights and that the Client Content are free of racist, defamatory, obscene and other legally restricted material.

6.6 The **Client** undertakes to **BDiPhoto** to indemnify and hold harmless **BDiPhoto** in full and defend at its own expense **BDiPhoto** against all costs, damages and losses incurred by it arising out of its use of the Client Content or breach of clause 6.5 above.

6.7 Each Party undertakes that it will keep secret and confidential any information supplied by either party in connection with this Agreement or in connection with the business of the other and in connection with the Photographs and shall only disclose such information or part thereof (except to its own employees and advisers and then only on a need to know basis) with the other party's prior written consent PROVIDED THAT this Clause shall not extend to information which was and can be shown to be rightfully in the possession of the **Client** prior to the commencement of the negotiations leading to this Agreement or which is in the public domain (other than as a result of a breach of this clause);

6.8 **BDiPhoto** warrants that it will use reasonable efforts to ensure that the Photographs do not infringe the copyright of any third party.

7. DELIVERY, INSPECTION AND ACCEPTANCE

7.1 **BDiPhoto** shall, on the Delivery Date, provide a CD or suitable digital media containing images of the Photographs to the **Client's** premises. If the **Client** requires delivery of the Photographs in any other format or by any specified method of delivery, the **Client** shall meet such additional costs (if any) incurred by reason of that requirement.

7.2 The Photographs shall only be treated as being defective if both the **Client** and **BDiPhoto** agree that the Photographs are below the specific resolution communicated by the **Client** to **BDiPhoto** (if any) or any commonly observed specific requirements as are suitable for the required media in which the Photographs are intended to appear; or

7.3 The **Client** shall not be entitled to claim that the Photographs are defective in accordance with clause 7.2:

7.3.1 it has already approved the Photographs, including by email; or

7.3.2 it or its directors, agents, employees or any other person acting under its instructions has been active in the art direction applied to the Photographs.

7.4 The **Client** shall inspect the Photographs upon delivery and shall notify **BDiPhoto** immediately if it wishes to claim that the Photographs are defective in accordance with clause 7.2 above whereupon **BDiPhoto** shall, if such defect is proved, be given 5 days within which to remedy the same.

7.5 In the event that it is not possible for **BDiPhoto** to remedy any defect in the Photographs in accordance with clause 7.4 above and before any deadline set by a third party for the delivery of the Photographs by the **Client**, the **Client** shall be entitled to reject the Photographs and to withhold Payment of the Fees.

7.6 If the **Client** fails to alert **BDiPhoto** of any defects in the Photographs within five (5) days of delivery then the **Client** shall be deemed to accept the Photographs.

8. LIABILITY AND WARRANTY

8.1 Subject to Clause 8.2 below, **BDiPhoto**'s liability for any loss or damage direct or otherwise and howsoever caused whether in tort, contract or otherwise shall not exceed the Fees (less agreed third party expenses as identified in clause 5.4.4.) invoiced by **BDiPhoto** to the **Client** for the Photographs.

8.2 Nothing in this Agreement shall limit the liability of either party for death or personal injury caused by its negligence.

8.3 **BDiPhoto** shall not be liable to the **Client** for any consequential loss or damage.

8.4 When instructions or advice are given or received orally by **BDiPhoto**, it shall have no liability to the **Client** for any misunderstanding or misrepresentation, which may arise in relation thereto except in relation to fraudulent misrepresentations.

8.5 **BDiPhoto** shall have no liability to the **Client** in respect of the Client Content. On completion of the Photographs the **Client** agrees to collect the Client Content within 2 months of completion of the works, failing which, **BDiPhoto** may dispose of it in any way which it sees fit.

9. LEGISLATION AND THIRD PARTY MATERIALS

9.1 The **Client** shall be responsible for and notify **BDiPhoto** of all and any applicable rules, regulations, codes of practice and laws relating to its use and operation of the Photographs including without limitation any obligations under the Data Protection Act 1998; Regulation of Investigatory Powers Act 2000; Competition Act 1998; Disability Discrimination Act 1995 and equivalent legislation. **BDiPhoto** shall not be liable to Client in relation to such legislation and gives no warranty, representation or undertaking in relation thereto, unless agreed in writing otherwise.

9.2 **BDiPhoto** gives no warranty, representation or undertaking in relation to any third party materials or works.

9.3 Subject to and provided that **BDiPhoto** acts in accordance with this clause 6 above, the **Client** agrees that it is responsible for its selection and use of all Photographs and contracting with any third parties in relation thereto and that it shall be responsible for making reasonable enquiries into the copyright and like rights in any Photographs.

9.4 Subject to the foregoing **BDiPhoto** shall have no liability to the **Client** whatsoever in relation to the Photographs and gives no warranty and makes no representation as to whether Photographs contain or are free from racist, defamatory, sexually explicit, inflammatory, obscene or other legally restricted material and explicitly excludes all and any liability in relation thereto.

10. TERMINATION AND CANCELLATION

10.1 **BDiPhoto** shall be entitled to terminate this Agreement upon the **Client's** material breach (including without limitation non-payment of any sum due) unless the **Client** remedies such breach within 7 days of its occurrence.

10.2 **BDiPhoto** will not be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any unforeseen contingency beyond the reasonable control of **BDiPhoto** including without limitation Internet outages, communications outages, fire, flood, war or act of God.

10.3 In the event that the **Client** wishes to cancel the creation of the Photographs by **BDiPhoto** or the provision of photographic services in accordance with this Agreement (save in the event of a material breach by **BDiPhoto** of a fundamental term of this Agreement) at any time, **BDiPhoto** shall be entitled to recover the following proportions of the Fees:

10.3.1 where such cancellation is communicated to **BDiPhoto** more than 48 hours in advance of the Shoot Date **BDiPhoto** shall not be entitled to any proportion of the Fees;

10.3.2 where such cancellation is communicated to **BDiPhoto** within the period between 48 hours and 24 hours in advance of the Shoot Date, **BDiPhoto** shall, at its option, be entitled to recover 50% of the Fees;

10.3.3 where such cancellation is communicated to **BDiPhoto** within the period of 24 hours before the Shoot Date, or if any such cancellation is not communicated to **BDiPhoto** at all, **BDiPhoto** shall, at its option, be entitled to recover 100% of the Fees;

10.4 During the course of this Agreement and for a period of 12 months afterwards, the **Client** shall not solicit the staff of **BDiPhoto** or any person employed or engaged by **BDiPhoto** in relation to its provision of the Services in the 6 months prior to expiry or termination of this Agreement, or entice them to transfer their employment or services.

11. GENERAL

11.1 Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the Parties and neither of the Parties shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other party.

11.2 If at any time any part of this Agreement is or becomes unenforceable, such part will at **BDiPhoto's** option be construed as far as possible to reflect the parties' intentions and the remainder of the provisions will remain in full force and effect.

11.3 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach of this Agreement.

11.4 The **Client** shall not assign the benefit or burden of this Agreement without the prior written consent of **BDiPhoto**.

11.5 No person who is not a party to this Agreement shall be entitled to enforce any of the terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

11.6 These Terms are made and shall be construed in accordance with the laws of England and the Parties submit to the exclusive jurisdiction of the English courts.



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B D I (GB) Limited

Professional Photographers & Image Makers

Registered in England No. 5801185

Registered Office: 21, Angel Hill, Tiverton, Devon.

Managing Director / Co. Sec: Ian Firth *BSc (Hons) MRICS*