

## **Terms and conditions**

### **Definitions**

**1** In these terms and conditions the following definitions shall apply:

- a) "The Customer" means any person, firm or company who negotiates with or contracts to take on loan, or to purchase, the Pictures of FlipSide Photography.
- b) "Picture" includes a photographic print or transparency or digital file or any other item which may be offered for the purposes of Reproduction.
- c) "Reproduction" includes any form of publication or copying, of the whole or part of any picture and whether or not altered whether by printing, photography, slide projection (whether or not to any audience), xerography, artist's reference, artist's illustration, layout at presentation, electronic or mechanical Reproduction or storage by any other means, and "to reproduce" shall be construed accordingly.

### **This agreement**

**2** The conditions apply to all orders, supplies and Reproductions of Pictures from or by FlipSide Photography, and shall apply in place of and prevail over any terms and conditions contained or referred to in the Customer's order or correspondence or elsewhere or implied by trade practice or course of dealing. No variation of terms and conditions set out herein shall be effective unless agreed in writing by both parties.

### **Loan of the pictures**

**3** Pictures are supplied to the Customer by way of loan only. No property or copyright in any Pictures shall pass to the client whether on their submission or on FlipSide Photography's grant of Picture Reproduction rights in respect thereof.

### **Reproduction Rights**

**4** The Customer may reproduce the pictures only:

- a) with the prior written consent of FlipSide Photography and
- b) after agreement to pay the appropriate Reproduction fee

**5** Possession of the Picture(s) does not constitute consent to reproduce them. The Customer must notify FlipSide Photography of the intended use of the Pictures. FlipSide Photography may, at its discretion, then grant consent to the Reproduction by letter or by electronic mail or by invoicing the appropriate Reproduction fee and such consent shall be subject to any terms expressed therein.

**6** a) Until FlipSide Photography has invoiced the Reproduction fee neither party is committed to grant or to acquire any Reproduction rights in any picture. After a fee has been agreed and an invoice issued there is a firm and binding contract whereby FlipSide Photography is committed to grant Reproduction rights and the Customer to acquire them. If after such invoicing but before payment the Customer requests cancellation of the Reproduction rights FlipSide Photography may in its discretion cancel subject to the client paying a cancellation fee.

b) The Customer agrees to indemnify FlipSide Photography in respect of any claims or damages or any loss or costs arising in any manner from the Reproduction rights of any picture supplied to the Customer by FlipSide Photography. This also includes the case where, if any third party reproduces any picture loaned to the Customer, the Customer shall, without prejudice, pay FlipSide Photography all the fees which that third party would be liable to pay to FlipSide Photography had the third party borrowed and reproduced the Picture pursuant to these terms.

**7** Unless otherwise agreed in writing by the parties, Reproduction rights for the Pictures granted by FlipSide Photography shall:

- a) Not be exclusive to the Customer except when specified on the invoice.
- b) Be exercisable only by the Customer and shall not be assigned without the prior written consent of FlipSide Photography, nor may any picture submitted to the Customer be loaned or transferred to third parties save for the purpose of the exercise by the Customer of such Reproduction rights.
- c) Be limited to the precise use, period of time and territory specified on FlipSide Photography's invoice, and relate to a single publication in a single size with text (if any) in one language only, unless otherwise agreed in writing.
- d) Any Reproduction rights granted are by way of license and no partial or other assignment of copyright shall be implied.
- e) The Customer shall pay all invoices within 30 days of receipt.
- f) If payment is not made in accordance with e) above then FlipSide Photography may rescind this agreement and recover damages, or charge interest at the Bank of England base rate + 2% per month on the overdue amount.

**8** FlipSide Photography does not warrant the accuracy of any description of Pictures and the identification of persons appearing in them and therefore the Customer:

- a) Shall report any discrepancies to FlipSide Photography immediately on their discovery.
- b) Acknowledges that FlipSide Photography shall not be liable to the Customer for any inaccuracies.
- c) Shall indemnify FlipSide Photography against any claim, loss or damage arising directly or indirectly from the Customer's use of the pictures.

**9** The Customer acknowledges and accepts that because of age and origin of the Pictures and the images contained therein, FlipSide Photography gives no warranty or rights to the Customer as to:

- a) The existence or validity of model or other releases in respect of any Picture or image; or
- b) The use of names, people, trade marks, registered or copyright designs or works of art depicted in any Picture or image.
- c) Moral rights (as set out in chapter IV of the Copyright Designs and Patents Act 1988) relating to the use of the Pictures.

The Customer shall obtain all necessary releases, rights or consents for all uses and shall indemnify FlipSide Photography against any loss or claims arising from the use of the Pictures by the Customer or any third party without effective releases, rights or consents arising from any infringement of moral rights relating to use of the Pictures.

**10** All Reproductions of Pictures shall be credited to "FlipSide Photography" and, if required by FlipSide Photography or by law, the name of the photographer.

**11** If any Picture reproduced by the Customer omits the credit line specified by FlipSide Photography the Reproduction fee payable by the Customer shall be subject to an increase of 50% unless otherwise agreed in writing. The right of a credit is asserted in accordance with sections 77 + 78 Copyright Designs & Patents Act 1988. It is contrary to the Act and an offence to copy, or allow to be copied, the Pictures covered by this contract by any means without prior written consent from FlipSide Photography (see clause 4).

**12** The Customer shall supply FlipSide Photography immediately upon Reproduction a verification photocopy, sample or description of the product, which bears the Reproduction.

**13** No addition to, deletion from or alteration to or adaptation of a Picture may be made without the prior written permission of FlipSide Photography.

**14** While FlipSide Photography takes all reasonable care in the performance of this Agreement generally, FlipSide Photography shall not be liable for any loss or damage suffered by the Customer or by any third party arising from the use or Reproduction of any picture or its caption.

**15** Failure by FlipSide Photography to exercise or enforce any rights under these conditions shall not be deemed to be a waiver of any such rights at any time or times thereafter.

**16** Any notice hereunder shall be deemed to have been duly given if delivered by hand or sent by first class prepaid post, fax, telex or electronic mail to the party at its last known address. Notices and deliveries sent by first class post shall be deemed to have been given two days dispatch and notices sent by fax, telex or electronic mail shall be deemed to have been given on the date of dispatch.

#### **Quality of pictures**

**17** FlipSide Photography takes all reasonable steps with regards to digital colour management to minimise colour aberrations and to produce Pictures that are accurately colour balanced, as far as this is possible. The Customer acknowledges and accepts that due to the highly variable nature of digital media and digital Reproduction techniques, Picture quality may vary and no guarantee of print consistency and exact colour and/or tonal Reproduction can be made.

**18** This Agreement shall be subject to and construed in accordance with English law and the parties agreed to accept the exclusive jurisdiction of the courts of England.