

# Terms of Business

## 1) DEFINITIONS

For the purposes of this agreement, "the Client" is the party commissioning Lisa Daubermann Photography, (hereafter referred to as the Photographer) and "Client" shall, where the context so admits, include its respective assignees, sub-licensees and successors in title. "Photographs" means all photographic material furnished by the Photographer, whether negatives, prints or any other type of physical or electronic/digital material. These terms and conditions shall also apply to all shoots estimated by the Photographer's appointed agent, if any.

## 2) COPYRIGHT AND OWNERSHIP OF MATERIALS

For local usage, i.e. (SADC (Southern African Development Community) is a regional organisation consisting of 14 Member Countries (Angola, Botswana, Congo (DR), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe), of all photographic work, the Photographer adheres to the price and usage guidelines, and terms and conditions, as drawn up by SAPP [South African Professional Photographers] & APP[A] Association of Professional Photographers [Africa].

For international usage (outside SADCC region) of all photographic work, the Photographer adheres to the price and usage guidelines, and terms and conditions, as drawn up by the British Association of Photographers (AOP).

The entire copyright in the Photographs and ownership of all physical materials is retained by the Photographer at all times throughout the world.

## 3) USE

The Licence to Use comes into effect from the date of full payment of the relevant invoice(s). No use may be made of the Photographs before payment in full of the relevant invoices(s) without the Photographer's express permission. Any permission that may be given for prior use will automatically be revoked if full payment is not made by the due date or if the Client is put into receivership or liquidation. The Licence to Use only applies to the advertiser and product as stated on the cost estimate / invoice and its benefit shall not be assigned to any third party without the Photographer's written permission. Accordingly, even where any form of 'All Media Licence' is granted, the Photographer's permission must be obtained before any use of the Photographs for other purposes e.g. use in relation to another product or sub-licensing through a photo library. Permission to use the Photographs for purposes outside the terms of the Licence to Use will normally be granted upon payment of a further fee, which must be mutually agreed (and paid in full) before such further use. Any future changes / extensions to the Licence to Use must be negotiated with the Photographer. Any unauthorised use of the Photographs will be charged for according to the relevant Association Local or International.



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#### 4) EXCLUSIVITY

The Client will be authorised to publish the Photographs to the exclusion of all other persons including the Photographer. However, the Photographer retains the right in all cases to use the Photographs in any manner, at any time and in any part of the world for the purpose of advertising or otherwise promoting his/her work, unless otherwise agreed. After the exclusivity period indicated in the Licence to Use, the Photographer shall be entitled to use and license others to use the Photographs for any purposes.

#### 5) CLIENT CONFIDENTIALITY

The Photographer will keep confidential and will not disclose to any third parties or make use of material or information communicated to him/her in confidence for the purposes of the Photography, save as may be reasonably necessary to enable the Photographer to carry out his/her obligations in relation to the commission.

#### 6) INDEMNITY

The Photographer shall only be responsible for obtaining any clearances in respect of third party copyright works, trademarks, designs or other intellectual property if this has been expressly agreed in writing before the booked session. In all other cases the Client shall be responsible for obtaining such clearances and will indemnify the Photographer against all expenses, damages, claims and legal costs arising out of any failure to obtain such clearances.

#### 7) PAYMENT

Terms of payment are:- A specified percentage of consideration non-refundable booking fee, paid to the Photographer's designated account, payable on acceptance of Quotation. The balance is payable on confirmation of the work(s) produced and prior to delivery of the finalised images on USB or transferred via WeTransfer and/or Pixieset internet service. Unless otherwise agreed by the Photographer. If payment is not received in full within 7 days of such confirmation, the Photographer reserves the right to charge interest at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the date payment was due until the date payment is made. Queries, if any, on an invoice must be raised within 10 working days from receipt of the invoice. Thereafter, no further queries will be entertained and the invoice will be deemed accepted.

#### 8) EXPENSES

All expenses and production costs must be paid for in advance of the shoot, unless mutually agreed by both the Client and the Photographer. Where extra expenses or time are incurred by the Photographer as a result of alterations to the original brief by the Client, or otherwise at its request, the Client shall be liable to pay such extra expenses or fees, at the Photographer's normal rate, in addition to the original estimate agreed.

#### 9) REJECTION

If the Client is not present during the session the Photographer's interpretation of the brief is deemed acceptable to the Client. There is no right to reject on the basis of style or composition. In the event of any rejection, fees payable to Lisa Daubermann Photography are in accordance with what appears on the Cost Estimate.



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## 10) CANCELLATION & POSTPONEMENT

A booking is considered firm as from the date of confirmation and accordingly the Photographer will, at his/her discretion, charge a fee for cancellation or postponement. If a confirmed session is cancelled or postponed for reasons (including unsuitable weather / light) outside the control of the Photographer, the Photographer reserves the right to charge a cancellation fee together with all incurred expenses.

On sessions of two days duration or less, cancellation within 2 days notice = 100% of fees + expenses.  
Cancellation between 3 & 6 days notice = 50% of fees + expenses.

On sessions in excess of 2 days duration, cancellation within 2 days notice = 100% of fees + expenses.  
Cancellation between 3 & 6 days notice = 75% fees + expenses.

'Fee' means Photographer's fees as they appear on the estimate.

'Days' mean working days.

'Shoot Duration' | 'Session Duration' includes all sessions, travel, reconnaissance, preparation or test days.

'The Shoot' is defined as the number of confirmed days whether the job is undertaken as a whole or in separate parts.

'Expenses' include any and all costs incurred by the Photographer pursuant to the Client's brief.

## 11) RIGHT TO CREDIT

The Photographer's name must be printed small on or in reasonable proximity to all published reproductions of the Photographs, with exception in commercial use, such as packaging. This applies to all editorial uses, magazine and newspaper print media, and website usage. Excluding business and personal brochures, and in other cases if stated on the estimate.

## 12) BRIEFS

The brief shall become binding upon the Client and the Photographer upon acceptance of the Cost Estimate. Any amendment to the Brief shall be submitted to the Photographer in writing.

On acceptance, all terms of a Cost Estimate shall be legally binding.

## 13) COST ESTIMATE

The Cost Estimate shall be based upon the Brief. It is understood that a Cost Estimate can only be made on the information given by the Client at the time and for the purposes stated in the estimate. Any subsequent alteration to the Brief renders the estimate liable to cost variations. The photographer will include in the estimate only those items or personnel that are specifically requested by the Client. Where the Client is paying directly for items or personnel, the Photographer may supply a separate indication for these, but shall assume no liability.

## 14) OVERTIME AND DELAYS

In circumstances not under the control of the Photographer, the Photographer shall be entitled to incorporate overtime charges into the invoice, whether specified or not in the Cost Estimate, for work exceeding or outside standard business hours.



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## 15) PHOTOGRAPHER'S LIABILITY

The Photographer's entire liability to the Client is limited to the contractual value of the Cost Estimate accepted for the assignment by the Client. All claims for incidental or consequential damage are excluded.

## 16) INDEMNITY

The Client indemnifies the Photographer and Lisa Daubermann Photography against all or any claims of any nature or description, civil or criminal, which may be brought or instituted against the Photographer by any third party or authority, arising during the course of the assignment and related in any way thereto, or alleged to arise from or relate to the subject matter of any photograph(s) or sensitized material taken or processed or otherwise dealt with by the Photographer at the instance or request of the Client.

## 17) FORCE MAJEURE, ACTS OF GOD

Delivery estimates are made by the Photographer in good faith, but in the event of an Act of God or circumstances beyond the reasonable control of the Photographer, the Client shall have no claim for damages consequential or otherwise against the Photographer because of the late or non-delivery of the material. Whilst every effort shall be made by the Photographer to carry out the terms of the contract, he/it shall not be liable for any loss or damage sustained by virtue of the non-fulfilment thereof as a result of inability to secure labour, materials or supplies, or as a result of any war, Act of God, strike, lockout, lockdown, electricity blackout, or the like, or through any other cause beyond the Photographer's control.

## 18) THIRD PARTY TERMS

Bookings of third party suppliers, including models, are subject to such terms and conditions as these parties may impose and can be made available on request.

## 19) DIGITAL NEGATIVES | FULL SIZE HIGH RESOLUTION DIGITAL FILES

Original full sized, high resolution, Digital Negatives also known in the industry as RAW files are not supplied unless otherwise arranged or commissioned and estimated for. Original Digital Negatives (RAW files) are the property of the photographer. All printing from the negatives will be controlled by the photographer to ensure the highest quality end product. Digital Negatives are not archival as are prints.

## 20) ELECTRONIC STORAGE

Where the Photograph(s) are captured / delivered to Client in digital format for commercial clients only, after first delivery of images, it is The Client's responsibility to archive these images. The Client should treat the delivered files carefully, (noting that USB|DVD are unreliable archival media) and should keep a safe copy/duplicate for the duration of the license.

The Photographer is not obligated to archive any shoot material, unless by prior written agreement. Manipulation of the image or use of only a portion of the image may only take place with the permission of the Photographer.



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## 21) APPLICABLE LAW

This agreement shall be governed by the laws of the Republic of South Africa and subject to the exclusive jurisdiction of the South African Courts.

## 22) VARIATION

These Terms and Conditions shall not be varied except by agreement in writing signed by both parties.

## 23) ENTIRE AGREEMENT

This agreement constitutes the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this agreement. Neither party shall be entitled to rely on any agreement; understanding or arrangements not expressly set forth in this agreement save for any representation made fraudulently.

## 24) PET PORTRAITURE

In the case of Pet Portraiture, for private commissions or commercial commissions: please note that the results of the sessions are fully reliant of the co-operation of the animal handlers, pet owners, and especially the co-operation of the animal at the session. Even though every effort will be made at all times to capture the images that have been requested, these elements (animals) cannot be controlled or predicted by the photographer.

## 25) PRODUCT COLOUR REPLICATION

All studio photography is undertaken within a colour neutral studio and utilising calibrated equipment. The Client acknowledges that the photographer will not be held liable for any product colour variations outside of the studio and studio calibrated equipment.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Company: \_\_\_\_\_

Project: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Print witness name: \_\_\_\_\_



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