

TERMS & LICENCES



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A guide to copyright and licences

How do photographers charge?

There are no set rates in commercial photography. The majority of commercial photographers will charge a day rate. The type of commission and specialism will generally dictate the fee - photographers will also take into account a number of other factors to determine the cost including:

- Where the work is to be used e.g. on packaging, annual reports, billboards, national press, website
- The length of time the work is to be used by you
- The territory or territories in which the work is to be used
- Whether the images are required on an exclusive basis

If you have a tight budget, discuss this with the photographer who can advise if it is realistic and what you can expect for your proposed budget. Be aware that if other professionals i.e. models, stylists, assistants etc. are needed these will be charged on top of the photographer's fee, as will film and processing or digital capture and digital imaging. The photographer will estimate these extra costs for you.

There is a misconception that if the images are shot digitally, rather than on film, that this is a cheaper way of producing images. This is not true. Some photographers will still shoot on film but deliver the images in a digital form whilst others will shoot and deliver digitally. Both methods incur costs.

In order to produce high quality digital images a lot of time and skill is necessary after the shoot, in preparing the images for presentation to the client and ultimately for reproduction. In addition, a professional photographer has to invest heavily in good equipment and software. This equipment needs to be replaced/updated frequently to ensure it meets the standards required to produce professional results. After discussing your needs and agreeing a fee the photographer will undertake the commission and issue a "license to use".

The Photographer retains the entire copyright in the Photographs at all times.

Why don't I own the copyright?

It is rare for a client to insist on unlimited use of the images that would require copyright ownership as this can be a costly affair. The price of the job includes the agreed media – an unrestricted license would include every possible media including billboards, videos, TV, CD's, DVD's, t-shirts etc. - worldwide for the term of copyright, which is 70 years after the photographer dies. If professional models are needed for the shoot their charges also reflect the use to which the image is to be used. The price for this type of license would be enormous and you would be paying for use you do not need. This is like buying a car to make one journey when you could have hired a car at a fraction of the cost.

To be fair to the client and ensure they get the rights they need, Michael Powell offers three licenses; **Licence For Editorial Use**, **Licence For Exclusive Commercial Use (Two Years)** and **Licence For Exclusive Commercial Use (In perpetuity)**. Each is explained below.

Licence For Editorial Use

This licence is most useful to companies who require images as part of a short term PR/publicity campaign. The client may be working to a tight budget or need a frequent turnover of images as part of a longer term campaign. No extra fee over the agreed shoot fee is charged for this licence.

What you can do: Photographer grants you a non-exclusive, non-transferable, worldwide licence to use images for permitted editorial purposes, defined as:

- *as part of an editorial, non-commercial, news or informational website, magazines, books, newspapers, other printed publications and media, video and broadcast in context of providing news, information or commentary in perpetuity.*
- *non-advertising, non-promotion, non-brochures, non-packaging of any kind*
- *not for resale, prints, posters, or other commercial display of image where monetary or other compensation is transferred*

- *use by commissioned PR agency in magazines, newspapers, and trade press as part of a PR campaign to promote the license holder exclusively where the subsequent PR and publicity clearly benefits the license holder only* The license holder should be clearly mentioned in copy or credits*

What you may not do: *Buyer may not resell, relicense, redistribute without written permission from photographer. Use for any commercial purpose. Use as a derivative work, and reselling or redistributing such derivative work is prohibited. Images may not be incorporated into trademarks, logos, or service marks. Images may not be made available for download. As no fee is charged for this licence the Photographer reserves the right to cancel it with written notice.*

Licence For Exclusive Commercial Use (2 years duration)

This licence is useful to companies who do not want the photographs to be available to their competitors for the duration of a campaign of up to two years. The fee for this licence is the agreed shoot fee plus 50%.

What you can do: *Photographer grants you an exclusive, non-transferable, worldwide license for a two year period to use images for permitted commercial purposes, defined as:*

- *advertising, promotion, brochures, packaging*
- *as part of a commercial website for promotional purposes*
- *prints, posters, flyers, tearsheets for promotional purposes (not for resale)*
- *prints, posters, or other commercial display of image*
- *use by commissioned PR agency in magazines, newspapers, and trade press as part of a PR campaign to promote the license holder exclusively where the subsequent PR and publicity clearly benefits the license holder only* The license holder should be clearly mentioned in copy or credits*
- *video, broadcast, theatrical*

What you may not do: *Buyer may not resell, relicense, redistribute without express written permission from photographer. Use as a derivative work, and reselling or redistributing such derivative work is prohibited. Images may not be incorporated into trademarks, logos, or service marks. Images may not be made available for download over 800x600 pixels. Where images are made available to a commissioned PR agency those images must be of clear, exclusive benefit to the license holder who should be named in the published article.*

Licence For Exclusive Commercial Use In perpetuity

This license is most useful to companies who do not want the images to be available to their competitors at any time. The fee for this license is the agreed shoot fee plus 100%.

What you can do: Photographer grants you an exclusive, non-transferable, worldwide license for a specified period to use this image for permitted commercial purposes, defined as:

- *advertising, promotion, brochures, packaging*
- *as part of a commercial website for promotional purposes*
- *prints, posters, flyers, tearsheets for promotional purposes (not for resale)*
- *prints, posters, or other commercial display of image*
- *magazines, newspapers, and trade press where the subsequent PR and publicity clearly benefits the license holder and the license owner only*. The license holder should be clearly mentioned in copy or credits*
- *video, broadcast, theatrical*

What you may not do: Buyer may not resell, relicense, redistribute without express written permission from photographer. Use as a derivative work, and reselling or redistributing such derivative work is prohibited. Images may not be incorporated into trademarks, logos, or service marks. Image may not be made available for download over 800x600 pixels.

Images will not be made available to anyone else under the terms of this license except with permission from the license holder and for purposes of self promotion by the photographer.

**For example a commission to promote a food product might also be of use to a manufacturer of farm machinery. The images may not be supplied by the licence holder to the manufacturer or be used to promote the manufacturer but the photographer is entitled to supply that image to the manufacturer after two years or with permission of the license holder.*

Applicable to all licences:

Michael Powell retains all rights, copyright, title and ownership of the image(s). All images are supplied with embedded copyright and contact information as IPTC metadata. No image may be supplied in any form or published on any web site with that data removed.

TERMS

1. DEFINITIONS:

For the purpose of this agreement “the Agency’ and ‘the Advertiser’ shall where the context so admits include their respective assignees, sub-licensees and successors in title. In cases where the Photographer’s client is a direct client (*i.e. with no agency or intermediary*), all references in this agreement to both ‘the Agency’ and ‘the Advertiser’ shall be interpreted as references to the Photographer’s client. ‘Photographs’ means all photographic material furnished by the Photographer, whether transparencies, negatives, digital files, prints or any other type of physical or electronic material.

2. WHAT YOU PAY FOR & RECEIVE:

Michael Powell will grant you a Licence To Use based on the signed and received Estimate/Confirmation Form, verbal or written confirmation. The Licence states clearly the agreed terms of use for images supplied.

3. COPYRIGHT:

The Photographer retains the entire copyright in the Photographs at all times throughout the world. The Photographer asserts his/her statutory right to be identified in the circumstances set out in Sections 77-79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof. All images are supplied with embedded copyright and contact information as IPTC metadata. No image may be supplied in any form or published on any web site with that data removed.

4. REQUESTED PHOTOGRAPHS:

The photographer cannot be held responsible for weather disturbances affecting coverage or where the allocated time for the commission has not been sufficient through circumstances beyond the photographer’s control. All efforts will be taken by the photographer to provide agreed coverage in the time allocated.

5. MATERIALS:

All photographs are printed to produce pleasing skin tones. Some clothing shades can be extremely difficult to accurately reproduce. If colour matching is crucial the client should provide a swatch before processing takes place.

6. EXCLUSIVITY:

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 purposes of advertising or otherwise promoting his work.

7. USE:

The Licence to Use comes into effect from the date of payment of the relevant invoice(s). No use may be made of the Photographs before payment in full of the relevant invoice(s) without the Photographer’s express permission. Any permission, which may be given for prior use, will automatically be revoked if full payment is not made by the due date or if the Agency is put into receivership or liquidation. The Licence only applies to the advertiser and product as stated on the front of the form and its benefit shall not be assigned to any third party without the Photographer’s 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 will normally be granted upon payment of a further fee, which must be mutually agreed (*and paid in full*) before such further use. Images may not be used in a pornographic, obscene, illegal, immoral, libelous or defamatory manner. Unless otherwise agreed in writing, all further Licences in respect of the Photographs will be subject to these terms and conditions.

8. 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.

9. INDEMNITY:

In the highly unlikely event of total photographic failure i.e. by equipment or processing, the Photographer’s liability shall be limited to a full refund of monies paid at that time. There is no warranty, express or implied, with the purchase of digital files. The photographer will not be liable for any claims, or incidental, consequential or other damages arising out of the license or buyer’s use of the image(s).

10. BOOKING , PAYMENT, CANCELLATION & POSTPONEMENT:

When the Photographer is commissioned by the Agency or Client those dates are allocated and reserved for the client. When a client cancels photography within two weeks of the shoot date 50% of the agreed fee will be payable by the client. When a client cancels photography within 2 days of any confirmed date a fee of 100% of the booked time rate will be charged. In the event of the job being rescheduled 50% of this fee will be credited to the invoice when the assignment is completed. Note: Any cancellation fee payable may include additional cancellation charges incurred or payable by the Photographer in respect of model fees, assistant fees, stylist charges, prop searches and purchase expenditure etc. Subsequent orders for discs, prints and other products are to be paid for in advance. All processing costs are charged at the prevailing rate at the time the materials arrive at the processing laboratory. Confirmation of booking, either verbal or written, confirms the client's acceptance of these terms and conditions. Invoice payment is due on the date received. The Photographer reserves the right to charge an administration charge of £15.00 per letter/telephone call, in pursuance of late invoice payment. If the invoice is not paid in full within 28 days of the Date & Tax Point the Photographer also reserves the right to charge interest at the rate prescribed by the Late Payment of Commercial Debt (Interest) Act 1998 from the date payment was due until the date payment is made.

11. EXPENSES:

Where extra expenses or time are incurred by the Photographer as a result of alterations to the original brief by the Agency or the Advertiser, or otherwise at their request, the Agency shall give approval to and be liable to pay such extra expenses or fees at the Photographer's normal rate to the Photographer in addition to the expenses as having been agreed or estimated.

12. REJECTION:

There is no right to reject on the basis of style or composition.

13. ELECTRONIC STORAGE:

Save for the purposes of production for the licensed use(s), the Photographs may not be stored in any form of electronic medium without the written permission of the Photographer. Manipulation of the image or use of only a portion of the image may only take place with the permission of the Photographer.

14. RIGHT TO A CREDIT

The Photographer's name will be printed on or in reasonable proximity to all published reproductions of the Photograph(s). The Photographer also asserts his statutory right to be identified in the circumstances set out in Sections 77-79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof. Photo credits should read ©michaelpowell.com

15. APPLICABLE LAW:

The laws of England & Wales shall govern this agreement. These Terms and Conditions shall not be varied except by agreement in writing.