



Terms and Conditions

AGREEMENT: This agreement between DanD photography + Video and the Client governs the assignment(s) described in the accompanying cost estimate (if applicable), and along with these Terms and Conditions, constitutes the entire agreement between the parties concerning that assignment.

1. BROAD DEFINITIONS

Photograph: includes a photograph, still, digital file, picture, transparency, negative, digital scan, design, artwork, painting, montage drawing, engraving or any other item which may be offered for the purposes of reproduction.

Video: includes any moving images, in any format whatsoever.

Materials: refers to any photographic *and/or* video material produced by DanD photography + Video as defined above.

DanD photography+ Video: the trading name of Dan Dunkley, freelance photographer/ cinematographer.

Reproduction: includes any form of publication, or broadcast (digital or print) or copying of the whole or part of any materials and whether or not altered by printing, photography, projection (whether or not to an audience), photocopy, artist's reference, artist's illustration, layout or presentation, electronic or mechanical reproduction or storage by any other means.

Client: is the person or single 'department' or similar (if part of a larger organisation) to whom the invoice is addressed (whether or not the Client is acting for a third party). In the case of an agent or agency, the Client is usually the person, organisation or similar they are representing.

Third party: any person, department or similar, or organisation that is not the original Client.

Editorial Use: is when materials are used to illustrate/ accompany an editorial article or feature only (print or online).

Corporate/ PR Use: is when materials are used in a publication or online medium that the Client *produces themselves*, to support the public image of the Client in a positive manner, to help them promote or sell services.

Advertising Use: is when the Client (or their client) pays for any materials DanD photography+ Video supplies to appear in any external media such as, but not limited to, newspapers, magazines, billboards, websites or TV as 'adverts' or 'advertorials'.

Publicity Use: is when the Client submits materials to an outside publication (print or online) for editorial use, and the Client (or their client) is not paying for that use.

2. COPYRIGHT

(a) The entire copyright in the photograph(s) and video(s) is retained by Dan Dunkley at all times throughout the world.

(b) Dan Dunkley supplies the technical and artistic ability to illustrate an idea photographically, and sells the right to reproduce his materials by means of a Licence. No property or copyright in any materials shall pass to the Client whether on its submission or on Dan Dunkley's grant of licensing/ reproduction rights, unless expressly arranged in a fully signed 'buyout' fee.

(c) Dan Dunkley asserts both his moral right to be identified as the author of his work, and the right to a credit is asserted in accordance with sections 77 and 78 of Copyright, Designs and Patents Act 1988.

3. LICENSING STRUCTURE AND PERMITTED USAGE

DEFINITION: '**Standard**' Licence Agreement: The *traditional rights managed* system of licensing materials. Client selects the (i) media (what materials will be used in), (ii) territory (where materials will be used geographically) and (iii) time period (length of time Client wants to licence use of the materials for). This helps Dan Dunkley provide the Client with an estimate for the total fee.

DEFINITION: '**Extended**' Licence Agreement: Grants the Client collateral use of materials for Corporate/PR use, and long time period of use (5 years+, negotiated) from the outset, UK territory only. More expensive than the more restrictive Standard Licence, and is negotiated on a case by case basis. Note: does not include 'Advertising' or 'Publicity' usage which is negotiated separately.

DEFINITION: '**Licence to Use**': a document (Licence) issued to the Client confirming (subject to any necessary agreed alteration) the agreed media, territory and time period of use for the materials as negotiated with the Client at the Licence Agreement or pre-assignment stage (or as a single stand-alone document in the case of re-licensing of materials), plus any other terms that are necessary.

(a) DanD photography+ Video will calculate and invoice for the fee by relying in good faith on the information provided by you, the Client, in the Licence Agreement / pre-assignment stage.

(b) The right to use the materials will only be granted for the use(s) specified and for no other purpose. Any rights not granted are specifically reserved for Dan Dunkley's use and future disposition without any limitations whatsoever.

(c) The Licence to Use comes into effect from the date of payment of the relevant invoice(s). No use may be made of the materials before payment without DanD photography+ Video's permission.

(d) 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 company is put into liquidation.

(e) Where use is restricted as detailed in the Licence to Use, permission to use the materials for other purposes over and above the initial agreement (whether that be additional 'Media', 'Territory' or 'Time Period') will normally be granted upon payment of another fee, to be mutually agreed.

If you are unsure of your rights under the agreement, or if you wish to use the materials in a manner not specified, please contact

mail@dandphotography.co.uk

Supply to third parties

DEFINITION: '**Third party**': Any person, department or similar, or organisation that is not the original Client.

- (f) Reproduction rights granted are personal to the Client and may not be assigned, nor may any materials submitted to the Client be loaned or transferred to third parties unless rights are granted by Dan Dunkley and an appropriate fee arranged.
- (g) Any reproduction rights granted are by way of Licence and no partial or other assignment of copyright shall be implied.
- (h) DanD photography+ Video reserves the right to refuse to supply or grant a reproduction Licence to a third party when requested to do so by the Client.

NOTE: use of the materials other than in accordance with the terms of the Licence to Use constitutes copyright infringement and breach of contract, and may result in appropriate legal action.

4. EXCLUSIVITY

DEFINITION: Exclusivity: grants the Client authorisation to publish the materials to the exclusion of all other persons including the photographer, for a certain period of time.

DanD photography+ Video operates on a non-exclusivity policy on materials by default. Reproduction rights are not issued exclusively to the Client unless explicitly requested by the Client at the Licence Agreement stage (ie before an assignment begins). Exclusivity is a factor of pricing, and if requested by the Client, will be negotiated into the fee.

If an exclusivity arrangement is made, Dan Dunkley retains the right in all cases to use his materials in any manner at any time in any part of the world for the purposes of advertising or promoting his own work. After the exclusivity period indicated in the Licence to Use (if arranged) DanD photography+ Video shall be entitled to use his materials for any purposes.

5. PAYMENT

Unless mutually agreed between DanD photography+ Video and Client, payment will be due for any work carried out within 30 days of the issue of the invoice. In the case of editorial clients, payment will be made within the same time frame even if the materials and associated piece are not published (for whatever reason), or there is a delay in publishing.

If the invoice is not paid, in full, within 30 days Dan Dunkley 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.

Unless otherwise arranged, payment should be made by BACS, or crossed cheque made payable to 'D. Dunkley'.

- (a) Until Dan Dunkley has invoiced the reproduction fee neither party is committed to grant or acquire any reproduction rights in any materials. After a fee has been agreed and an invoice issued there is a firm and binding contract whereby Dan Dunkley is committed to grant reproduction rights and the Client to acquire them. If after such invoicing but before payment the Client requests cancellation of the reproduction rights Dan Dunkley may in his discretion cancel subject to the Client paying a cancellation fee.
- (b) The Client's right to reproduce materials arises only when Dan Dunkley's invoice relating to the grant of such right is fully paid (including interest charges levied on late payment of the invoice or invoices). Any reproduction before payment of the invoice constitutes an infringement of rights and a breach of this Agreement entitling Dan Dunkley to rescind the Agreement and rendering the Client liable for the payment of damages.
- (c) If payment is not made in accordance with (a) above then Dan Dunkley may rescind this Agreement and recover damages, or, at his option, may exercise his statutory right to interest under the Late Payment Of Commercial Debts (Interest) Act 1998 and a fee will be charged for each account reminder, duplicate invoice, or any other paperwork or correspondence involved in chasing the debt.
- (d) If any invoice issued to the Client is not paid by the Due Date, then all unpaid invoices issued to the Client become due of immediate effect, even if it is less than 14 days from the issue date, and that Dan Dunkley may consider these invoices as overdue when pursuing legal action for the recovery of said debts.
- (e) Dan Dunkley reserves the right to suspend ongoing services, such as (but not limited to) the distribution of materials, once any invoice issued to a Client becomes overdue, and also reserves the right to inform the reason of this to third parties to whom this suspension of service affects.
- (f) On the Client's death or bankruptcy or (if the Client is a company) in the event of a Resolution, Petition or Order for winding up being made against it, or if a Receiver is appointed, Dan Dunkley may at any time thereafter inspect any records, accounts and books relating to the reproduction of his materials to ensure that they are being used only in accordance with the reproduction rights granted to the Client.

6. CANCELLATION POLICY

- (a) Once the Client has made a booking for a specific time and date, DanD photography+ Video will not accept any other work from others for those times and dates.
- (b) If subsequently cancelled, at DanD photography+ Video's discretion, a cancellation fee may be charged to the Client according to the following schedule: When a client cancels a booking within two weeks of any confirmed date, a fee of 50% of the booked time rate may be charged. When a client cancels within one week of any confirmed date, a fee of 100% of the booked time rate may be charged. In addition to this cancellation fee, the Client may be charged for any expenses already incurred by DanD photography+ Video.

7. CUSTOMER SPECIFICATIONS AND REJECTION

It is the Client's responsibility to specify any particular requirements in the brief and Dan Dunkley will not be liable for alleged imperfect work caused by any inaccuracies in any brief. There is no right to reject or refuse payment on the basis of style, composition or any technical specifications relating to equipment used or materials delivered.

8. FORCE MAJEURE, LIABILITY AND CONSENT

- (a) DanD photography+ Video shall be entitled to delay or cancel any job/ commission if and to the extent that he is prevented from or hindered in or delayed in taking photographs or filming, processing photographs or editing video, or delivering materials through any circumstances beyond his control including but not limited to: adverse weather, accidents or illness, war, fire, breakdown of equipment or transport or an unavailability of supplies from the usual sources or supplier.

- (b) DanD photography+ Video takes all reasonable care to ensure equipment used for assignments is appropriate and fit for purpose, and will not accept responsibility or be held liable for any issues that arise with equipment that are beyond his control, including equipment failure, power failure, adverse weather, accidental damage, fire, theft, or any reasons of force majeure.
- (c) While Dan Dunkley takes all reasonable care in the performance of this agreement generally, he shall not be liable for any loss or damage suffered by the Client or by any third party arising from use or reproduction of any materials or its caption, nor shall he be held liable for any loss or damage suffered by the Client or by any third party for any problems caused by reasons of force majeure as detailed above.
- (d) The Client agrees to indemnify Dan Dunkley in respect of any claims or damages or any costs arising in any manner from the reproduction without proper reproduction rights of any materials supplied to the Client by DanD photography+ Video.
- (e) It is the Client who must satisfy themselves that all necessary rights, model releases or consents which may be required for reproduction, are obtained and it is acknowledged that DanD photography+ Video gives no warranty or undertaking that any such rights, model releases or consents have or will be obtained whether in relation to the use of names, people, trade marks, registered or copyright designs or works of art depicted in any materials. In the event that the materials issued or reproduced by or with the authority of the Client then the Client shall indemnify Dan Dunkley against any loss or damage, proceedings or costs where such rights, releases or consents have not been obtained.

10. STORING THE PHOTOGRAPHS OR VIDEOS / OWNERSHIP OF MATERIALS

(a) You acknowledge that photographs and videos produced by DanD Photography+Video are Dan Dunkley's valuable property in accordance with copyright law. The materials may not be reproduced or stored by computer or transmitted by a computer network other than is immediately necessary for the permitted use detailed in the Licence to Use. Where the materials are provided on optical disk (eg CD/DVD) or digitally by FTP or similar by DanD photography+ Video, you may not:

- (i) copy or reproduce the disk, the materials, or any files that accompany it, except as specified in the Licence to Use, or
- (ii) remove any copyright or trade mark or notice from any place where it appears on the disk or its accompanying files, or
- (iii) remove any copyright, author details or any other information Dan Dunkley has added digitally to the 'EXIF' information / 'metadata' of any digital files or materials.

(b) Title to all materials remains the property of Dan Dunkley. When the Licence to Use has expired, if you have not negotiated and paid for further 'time period' usage, you should immediately:

- (i) stop using the materials
- (ii) delete the materials and all copies from all storage media within your possession or control.

11. APPLICABLE LAW

These Terms and Conditions shall be governed by the laws of England and Wales.

12. VARIATION

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

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