

## TERMS AND CONDITIONS OF COMMISSIONING

**Simon Barber supplies the technical and artistic ability to illustrate an idea photographically, and sells the right to reproduce.**

In this Agreement the term 'Picture' includes a photograph, transparency, negative, digital scan, design, artwork, painting, montage drawing, engraving or any other item which may be offered for the purposes of reproduction:

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

The Client is the person or organisation to whom the invoice is addressed (whether or not they are acting for a third party).

**Cancellation:** Once the client has made a booking for a specific time and date, Simon Barber will not accept any other work from other clients for those times and dates.

As a result, once a booking is made, if it is subsequently cancelled, a cancellation fee will 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 will be charged. When a client cancels photography within one weeks of any confirmed date, a fee of 100% of the booked time rate will be charged. In addition to this cancellation fee, the client will be charged for any expenses already incurred by Simon Barber.

**Payment:** Simon Barber's invoice shall be paid within 30 days of issue.

Payment should normally be made by BACS of which details can be supplied upon request. Proof of postage of remittances is not considered proof of receipt, and clients are advised to send payment by any method affording proof of delivery.

The Client's right to reproduce a picture arises only when Simon Barber '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 Simon Barber to rescind the Agreement and rendering the Client liable for the payment of damages.

If payment is not made in accordance within 30 days then Simon Barber 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.

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 30 days from the issue date, and that Simon Barber may consider these invoices as overdue when pursuing legal action for the recovery of said debts.

A fee of £15.50 (including VAT) will be made for each account reminder, duplicate invoice, or any other paperwork, correspondence or phone calls involved with the pursual of a debt. This fee is non-refundable, and represents the additional time spent pursuing overdue invoices.

The Late Payments Calculator (available on request) is a guide to charges that will be made to an overdue invoice. These charges may vary due to the nature of the debt: for example, if reminders are sent out every

two weeks instead of monthly. This guide is shown to clarify Simon Barber 's charges for late payment, and publication of them does not constitute a right to pay an invoice after the due date.

Simon Barber reserves the right to suspend ongoing services, such as (but not limited to) the hosting of images or other distribution of pictures, 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.

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, Simon Barber may at any time thereafter inspect any records, accounts and books relating to the reproduction of his pictures to ensure that the pictures are being used only in accordance with the reproduction rights granted to the Client.

Unless a rejection fee has been agreed in advance, there is no right to reject on the basis of style, composition or editing.

**Copyright:** Whilst the client may have the right to reproduce the photographs Simon Barber retains the copyright and asserts his moral rights to be identified as the author within Part 1, Chapter 4 of the Copyright Designs and Patents Act.

**Indemnity:** While Simon Barber 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 picture or its caption.

The Client agrees to indemnify Simon Barber in respect of any claims or damages or any costs arising in any manner from the reproduction without proper reproduction rights of any picture supplied to the Client by Simon Barber.

It is the Client who must satisfy himself that all necessary rights, model releases or consents which may be required for reproduction, are obtained and it is acknowledged that Simon Barber 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 picture. In the event that the picture issued or reproduced by or with the authority of the Client then the Client shall indemnify Simon Barber against any loss or damage, proceedings or costs where such rights, releases or consents have not been obtained.

**Law:** This Agreement shall be subject to and constructed according to English Law and the parties agree to accept the exclusive jurisdiction of the Courts of England.

No variation of terms and conditions set out herein shall be effective unless agreed in writing by both parties.