

## Terms and Conditions of Laura Oonk Photography October 2020

### **1. Definitions** In these Terms and Conditions the following terms have the following meanings:

**Aw:** Dutch Copyright Act 1912. **BW:** Dutch Civil Code. **Photographic work:** photographic works as referred to in Article 10 paragraph 1 sub 9 Aw, or other works within the meaning of the Aw, which can be equated with the said photographic works. **Image Carrier:** the carrier on which a Photographic work (whether or not recognizable with the eye) is recorded, such as a slide, negative, print, Polaroid, CD-ROM, DVD or USB stick. **Photographer:** the user within the meaning of art. 6:231 BW. **Other Party:** the other party within the meaning of art. 6:231 BW. **Use:** reproduction and/or publication within the meaning of article 1 jo. 12 and 13 Aw.

**2. Application** These Terms and Conditions apply to all legal relationships between a Photographer and a Counterparty, including quotations, order confirmations and verbal or written agreements, even after the termination of an agreement, unless the parties have explicitly deviated from these Terms and Conditions in writing.

**3. Offers and Quotations** Quotations are without obligation, unless explicitly stated otherwise. The Photographer has the right to revoke this offer up to two working days after receipt of the acceptance of his offer. The quotation does not oblige the delivery of part of the performance at a proportional price.

**4. Compensation** 4.1 If the parties have not agreed a fee, the fee customarily used by the Photographer will apply. 4.2 If and insofar as it is not possible to speak of a commonly used fee, the Photographer will determine the fee in accordance with reasonableness and fairness, whereby the Photographer will be able to link, among other things, to (i) the current fees for comparable assignments in the market, between comparable clients and comparable contractors, whereby reference can be made to fees as charged by colleagues of the Photographer, (ii) what in previous cases has been legally deemed reasonable and fair, (iii) comparative fees such as charged by photographers in neighboring countries and (iv) the size and scope of the use of the work desired by the Other Party. 4.3 If it is plausible that the Photographer has incurred higher costs and/or has performed additional work, which was reasonably necessary, these costs and/or additional work will also be eligible for compensation by the Other Party.

**5. Invoice and payment** 5.1 The Other Party will check the Photographer's invoice for inaccuracies. If the Other Party has not rejected the invoice in writing with a statement of legally relevant reasons within ten working days of the invoice date and has returned it to the Photographer, the invoice concerned will be considered binding between the parties and any right of the Other Party to complaint will lapse. 5.2 Payment must be made within fourteen days of the invoice date. 5.3 The Other Party will make the payments due to the Photographer without any discount or appeal to compensation, except for settlement against deductible advance payments that it has provided to the Photographer. 5.4 If the Photographer has not received the amount due within the period referred to in 5.2, the Other Party is in default and therefore owes the statutory interest, increased by 2%. 5.5 If the Other Party is in default or otherwise has failed to fulfill one or more of its obligations, including an infringement of copyright, all costs incurred in obtaining settlement in and out of court will be for its account. 5.6 No use of the Photographic Work in any way is permitted, as long as the Other Party has not yet paid any outstanding invoice from the Photographer or has otherwise not fully complied with any obligation arising from any agreement with the Photographer.

**6. Audit** 6.1 If the compensation is made dependent in any way on facts or circumstances, which must be apparent from the administration of the Other Party, the photographer has the right, after a statement from the client, to check the administration of the client by means of a RA/AA accountant to be appointed by the photographer. 6.2 In the event that the outcome of the audit deviates by more than 2% from the statement and settlement of the Other Party, the costs of the audit will be fully borne by the Other Party. In addition, the Other Party will then pay the fee payable on the basis of the actual data to the Photographer after invoicing.

**7. Proof copy** In the event of publication of a Photographic Work, the Other Party must immediately and free of charge provide the Photographer with a proof copy of the publication.

**8. Delivery** 8.1 Image Carriers are delivered in the building where the Photographer conducts his business. Sent Image Carriers are at the risk of the Other Party from the moment of sending until the moment that the Image Carriers have been returned undamaged to the Photographer.

8.2 Digital files with Photographic Works are delivered in good consultation and in a manner agreed by both parties and are at the risk of the Other Party from the moment of sending. 8.3 If no delivery time has been agreed, this will be determined by the Photographer within reason.

8.4 If the Photographer and the Other Party agree that the delivery time is brought forward, the Photographer has the right to increase the originally agreed fee by at least 50%. 8.5 Each delivery, including a delivery of part of a composite order, can be invoiced separately if a part of a composite order is of separate value.

**9. Complaints** Complaints regarding the delivered work must be communicated to the Photographer in writing as soon as possible, but in any case within ten working days after delivery of the Photographic Works. The Photographer has the right to deliver good work for the rejected work within a reasonable period of time, unless this would lead to disproportionate damage to the Other Party.

**10. Possession/ownership Image Carriers** 10.1 If it has not been agreed that Image Carriers remain in the possession of the Other Party, the latter will have to return them to the Photographer without delay after the agreed use. Failure to fulfill this obligation or failure to do so on time does not lead to the loss of any rights of the Photographer. 10.2 If Photographic Works have been delivered as a digital file, the Other Party will delete and/or destroy them immediately after the agreed use and not store them for reuse. Failure to fulfill this obligation or failure to do so on time does not lead to the loss of any rights of the Photographer. 10.3 If an Image Carrier is not returned to the Photographer within four weeks after the agreed term, it will be considered missing. 10.4 In the event of loss or damage to an Image Carrier, the Other Party is obliged to compensate the damage suffered by the Photographer as a result. 10.5 Image Carriers remain the property of the Photographer. The Other Party is only entitled to transfer of ownership if this has been expressly agreed.

**11. Consignments** 11.1 Image Carriers made available as a consignment that are not used must be returned by the Other Party within ten working days of receipt. 11.2 Digital files with Photographic Works received as a consignment that are not used must be deleted or destroyed by the Other Party within ten working days of receipt. 11.3 In the event Image Carriers and/or digital files with Photographic Works are retained for longer than the agreed period, the Other Party is obliged to compensate the damage suffered by the Photographer as a result. 11.4 The Other Party is not only obliged to return the original Image Carriers sent by the Photographer in a timely manner, but will also not retain any manufactured duplicates of the Image Carriers in whatever form and/or received digital files containing Photographic Works and as such will destroy the duplicate immediately or have it destroyed.

**12. Commission agreement** 12.1 A commission agreement is an agreement in which the Photographer undertakes in the making and/or supplying of Photographic Works commissioned by the Other Party. 12.2 A commission agreement is concluded by acceptance by the Other Party of the Photographer's quotation. This acceptance may also be apparent from the fact that the Photographer sends the Other Party a written confirmation of the order which is held by the Other Party or, in the absence thereof, from the factual knowledge and tolerance of the Other Party of the performance of work by the Photographer in accordance with the quotation. 12.3 The Photographer has the right to carry out everything that is not explicitly described in a commission agreement according to his own technical and creative insight. 12.4 Changes to the commission by the Other Party for any reason whatsoever and pending the execution of the commission agreement, are for the account of the Other Party

and will only be carried out by the Photographer after a separate quotation of additional costs that has been signed for approval by the Other Party and submitted to the Photographer. 12.5 In the event of cancellation of a commission agreement by the Other Party at any time and for whatever reason, the Photographer is entitled to the agreed fee, minus the costs not yet incurred. 12.6 Unless explicitly agreed otherwise, the Photographer is completely free to choose the suppliers and third parties with whom the Photographer works to implement the commission agreement, including models and stylists.

**13. Internet** 13.1 In the event of agreed use on the Internet, the Other Party will ensure that the dimensions of the depicted Photographic Work on the Internet does not exceed 800 by 600 pixels. 13.2 The Other Party will not make any copies of the Photographic Works, digital or otherwise, other than those that are strictly necessary for the agreed use on the internet. At the end of the agreed use, the Other Party will delete or destroy the used (work)copy/copies of the Photographic Work. 13.3 The Other Party will provide the Photographer with free access to any part of her website on which the Photographic Work is depicted. If special provisions are required for this, she will provide these to the Photographer.

**14. Copyright** The copyright on the Photographic Works rests with the Photographer.

**15. License** 15.1 Permission for the use of a Photographic Work by the Other Party is only granted in writing and in advance in the form of a license as described by the Photographer in terms of nature and scope in the quotation and/or the order confirmation and/or the invoice relating thereto. 15.2 If nothing has been determined regarding the scope of the license, it will never include more than the right to one-time use, in unaltered form, for a purpose, circulation and manner as meant by the parties entered into the agreement in accordance with the understanding of the Photographer. 15.3 In the absence of a specifically agreed manner of publication and/or described purpose and/or specified circulation, only those powers are deemed to have been granted as are included in a standard license or that necessarily follow from the nature and scope of the agreement. 15.4 If the Photographer has given permission for electronic or other forms of image manipulation, the result can only be used after his express written approval.

**16. Sublicenses** Unless otherwise agreed, the Other Party is not authorized to grant sub-licenses to third parties.

**17. Copyright Infringement** 17.1 Any use of a Photographic Work that has not been agreed to will be considered an infringement of the Photographer's copyright. 17.2 In the event of an infringement, the Photographer will be entitled to compensation amounting to at least three times the license fee usually charged by the Photographer for such a form of use, without losing any rights to compensation for other damage (including the right to compensation for all direct and indirect damages and all actual judicial and extrajudicial costs).

**18. Attribution** 18.1 The name of the Photographer must be clearly stated next to any Photographic Work used, or be included in the publication with reference to the Photographic Work. 18.2 In the event of non-compliance with this condition, the Photographer is entitled to compensation of at least 100% of the license fee customarily used by the Photographer, without losing any right to compensation for other damages (including the right to compensation for all direct and indirect damages and all actual judicial and extrajudicial costs). 18.3 If the Other Party has obtained written permission to reproduce the Photographic Work, in whatever form, she is obliged to ensure that the name of the Photographer is affixed to these reproductions. In the case of digital/electronic copies, the Other Party is also obliged to ensure that the complete metadata - as made by the Photographer as part of the digital file - are preserved; this concerns information according to the EXIF, the IPTC, the XMP and the ICC standards.

**19. Personality rights** 19.1 When reproducing and publishing a Photographic Work, the Other Party will at all times observe the personality rights of the Photographer in accordance with Article 25 paragraph 1 sub c and d Aw. 19.2 In the event of violation of the aforementioned personality rights, the Photographer is entitled to compensation of at least 100% of the license fee customarily used by the Photographer, without losing any right to compensation for other damages suffered (including the right to compensation for all direct and indirect damages and all actual judicial and extrajudicial costs).

**20. Rights of third parties** 20.1 The Other Party that publishes a Photographic Work is responsible for obtaining the consent of those portrayed and/or other entitled parties. The Other Party indemnifies the Photographer against all claims in this matter. 20.2 The Photographer is obliged to cooperate to the best of his ability in tracing the persons referred to in this article.

**21. Liability Photographer** The Photographer is not liable for any damage that has arisen for the Other Party, unless there is gross negligence or intent on the part of the Photographer or persons engaged by him. The liability is in any case limited to the amount of the invoice or, if and insofar as there is insured damage, to the amount actually paid out under the insurance.

**22. Bankruptcy/suspension of payments** Both the Photographer and the Other Party have the right to immediately terminate the agreement in the event of bankruptcy or suspension of payment of the other party. In the event of bankruptcy of the Other Party, the Photographer has the right to terminate the issued license, unless the consequences thereof are contrary to reasonableness and fairness.

**23. Choice of law and forum** 23.1 All cases in which these Terms and Conditions apply are governed by Dutch law. 23.2 The applicability of the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG) is excluded. 23.3 Any dispute with regard to the text and explanation of these Terms and Conditions and a legal relationship between the Photographer and the Other Party will be submitted to the Zwolle subdistrict court in the Netherlands.

**24. Privacy** By signing the order confirmation, the Other Party gives the Photographer permission to use the Photographic Work to promote the Photographer's work using first names, in whatever way.