

Geoff Doré Photography

TERMS AND CONDITIONS OF SUBMISSION AND USE OF PICTURES

1. In these terms and conditions the following definitions apply:

1.1 **These Terms** means the terms and conditions set out in this document.

1.2 **GDP** means Geoff Doré Photography.

1.3 **The Client** means the party to whom GDP has addressed this document or, in the case of any document with more than one name and address, the party designated as "Client" on its face.

1.4 **Agreement** means the Client's agreement to these terms and conditions whether specifically agreed or arising from retention of the Pictures.

1.5 **Picture** includes a Photographic Transparency, Physical Print, or Digital Image.

1.6 **Delivery Note** means the delivery note issued by GDP in respect of Pictures supplied to the Client.

1.7 **Date for Return** is the date by which any Picture supplied by GDP must be returned to GDP as specified on GDP's Delivery Note, Licence to Use or as revised by notice in writing by GDP.

1.8 **Licence to Use** is a document issued by GDP to the Client granting limited reproduction rights in specified Pictures.

1.9 **Reproduction** includes any form of copying or publication of the whole or part of any Picture whether by printing, photography, slide projection (whether or not to an audience), xerography, artist's reference, artist's illustration, layout or presentation, exhibition or display, internet web site, electronic, digital or mechanical means or by any other means. **Reproduce** shall be construed accordingly.

2. No **variation of these Terms** shall be effective unless agreed in writing by GDP and the Client.

3. **Pictures are supplied on loan.** No ownership or copyright in any Picture shall pass to the Client on its submission or on the issue of a Licence to Use in respect of such Picture.

4. GDP reserves the right to charge a standard **Search Fee** of £25.00 sterling for preparing a selection of Pictures requested by the Client in the event that all Pictures from that Delivery are returned without any licensing for Reproduction agreed and paid for.

4.1 For a Picture that the Client wishes be supplied as a **Digital Image** file only, GDP reserves the right to charge a **scanning and preparation fee** of £10.00 sterling per Picture, and for delivery via CD-ROM a fee of £10.00 per CD-ROM, or for delivery via telecommunications system a **transmission fee** of £5.00 per Picture.

5. GDP's **Delivery Note** will list all Pictures delivered to the Client, which shall be presumed to have been received and in good condition unless, **within two (2) days of receipt (seven (7) days if outside UK)**, the Client notifies GDP in writing of any **discrepancy or damage**. Where Pictures are not returned within this time period then these Terms shall be deemed to have been accepted and agreed to by the Client.

6. Every Picture not required by the Client must be returned to GDP by the **Date For Return** on the Delivery Note or other Date For Return as requested by the Client and agreed to at the sole discretion of GDP. All necessary protection must be given to Pictures in transit which should be returned by any method affording proof of delivery. A list giving the Picture reference numbers and the total number of Pictures returned must be enclosed, and an advice in writing with this same information should be sent by separate post or fax.

6.1 Each Picture may be held by the Client free of any charges until its Date for Return, after which the Client shall be liable to pay a **Holding Fee** of the amount specified on the Delivery Note for each Picture for each week or part thereof until such time as the Picture is returned. In the case that all of the Pictures from the Delivery are returned without any licensing for Reproduction agreed and paid for, such Holding Fees shall become due and payable. In the case that at least one Picture from the Delivery has licensing for Reproduction agreed and paid for, such Holding Fees for Picture(s) returned unlicensed may be waived, at the sole discretion of GDP.

6.2 The Client may not retain or store any copies of any Picture after its Date for Return in any form. Payment of an invoice for Holding Fees shall not entitle the Client to retain the Picture after the Date for Return and GDP shall be entitled to issue further invoices for Holding Fees.

6.3 Any Picture not returned to GDP within three (3) months after its Date For Return, or if Reproduction licensing has been agreed, within three (3) months of the date of the relevant Licence or Invoice, or date of publication by the Client, whichever is sooner (or such other date as agreed in writing between Client and GDP), may, at the discretion of GDP (having given reasonable notice in writing to the Client), be presumed to be lost.

7. **Risk in and responsibility for Pictures** passes to the Client from the time they are received by the Client, or to any party to whom the Pictures have been consigned as requested by the Client and specified on the Delivery Note, until such time as the Pictures are returned to GDP and a signed acknowledgement of the safe receipt of the Pictures has been sent by GDP. The Client shall immediately inform GDP in writing of any known loss or misuse of or damage to any Picture while in the Client's possession or that of any third party.

7.1 The Client shall be liable to pay GDP **compensation** in the amount specified on the Delivery Note for each **seriously damaged or lost Picture** (or presumed lost pursuant to Clause 6.3 of these Terms). Payment of compensation does not entitle the Client to any rights whatsoever in any Picture.

7.2 **Any lost Picture subsequently found** must be returned to GDP immediately. In respect of any Picture returned to GDP undamaged and, in the case of a Photographic Transparency, with its seal unbroken (pursuant to Clause 7.4 of these Terms) then the compensation paid shall be refunded (less an amount equal to 25% of the total compensation paid for each month or part month (not exceeding three months) immediately following the date of loss or presumed loss.

7.3 Any Photographic Transparency returned without its mount or with its caption or reference number or other mount data missing or detached or defaced shall render the Client liable to pay a **replacement charge** of £20.00 per Transparency.

7.4 Any Photographic Transparency returned with its **security seal broken** shall be presumed to have been Reproduced in some form and, in the absence of a previous agreement for Reproduction (pursuant to Clause 8. of these Terms), shall render the Client liable for payment of an immediate fee of £100.00 per Picture by way of damages and further payment of damages for any unauthorised Reproduction.

8. The Client shall inform GDP of the intended use of any Picture and, if GDP in its discretion agrees to such use, GDP and the Client shall attempt to agree a fee for

such use. Until a fee for Reproduction has been agreed by GDP and the Client, and GDP has issued a **Licence to Use** and/or a corresponding invoice for the **Reproduction Fee(s)**, neither party is committed to grant or acquire any Reproduction rights in any Picture. The Client has the right to Reproduce a Picture only when GDP's invoice relating to the Licence to Use in respect of such rights is fully paid. **Any Reproduction before payment** of the invoice constitutes an **infringement of rights** and a breach of this Agreement entitling GDP to rescind the Agreement and rendering the Client liable for payment of damages. [NOTE: Damages for infringement of rights constitute conversion damages in some cases and would ordinarily substantially exceed the appropriate reproduction fee, or provide cause for an injunction against publication. *This note is intended only for the guidance of the Client and does not form part of these Terms and Conditions.*]

8.1 **Reproduction rights granted are strictly limited** to the use, medium, period of time and territory specified in GDP's Licence to Use and are non-exclusive unless the contrary is expressly stated in the Licence to Use.

8.2 Reproduction rights granted are by way of licence only and no partial or other assignment of copyright should be implied. Reproduction **rights granted may not be assigned** or sub-licensed. They are personal to the Client. Any Picture submitted to the Client may not be loaned or transferred to third parties except for the purpose of Reproduction by the Client as authorised by GDP's Licence to Use. In the case of a Picture supplied to the Client as a Digital Image file, the file information (containing caption and copyright details) must not be changed or deleted and must remain with the Digital Image file (and any copies) at all times.

8.3 Reproduction rights are not granted exclusively to the Client except when such **exclusivity** is expressly specified on the Licence to Use.

8.4 The Client agrees to indemnify GDP in respect of any claims or damages or loss or any costs arising in any manner whatsoever from the **unauthorised use** of any Picture supplied to the Client by GDP. Where a third party Reproduces any Picture loaned to the Client, the Client shall without prejudice to this indemnity pay GDP all the fees which that third party would be liable to pay GDP had the third party borrowed and Reproduced the Picture pursuant to these Terms.

9. While GDP takes all reasonable care in the performance of the Agreement generally, GDP shall not be liable for any loss or damage suffered by the Client or any third party arising from any defect in any Picture or its caption or in any way from its Reproduction.

9.1 Unless specified in writing, no warranty is given by GDP as to the existence or validity of **model or other releases** in respect of any Picture, GDP shall not be liable for the absence of any such release or for any defect in any existing releases. GDP gives no warranty as to the accuracy of any description of Pictures and shall not be liable to the Client for any inaccuracies.

9.2 GDP is not liable for any indirect or consequential losses or expenses suffered by the Client, howsoever caused, and including without limitation, loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.

10. The Client may (unless the contrary is stated in the Licence to Use) make minor retouches, alterations, enhancements or additions to or deletions from any Picture Reproduced (such as altering contrast, colour or density; retouching; addition of minor components; increasing or decreasing the importance or impact of individual features; removal of distracting and/or irrelevant details; softening; simplifying and extending background; improvement of skin tones) but may not otherwise retouch, alter, manipulate, add to, delete from or enhance any Picture Reproduced by electronic or other means without the prior written consent of GDP.

11. The Client shall pay GDP's invoices in full within 30 days of the invoice date, failing which GDP reserves the right to charge **interest on the overdue payment** at a rate of **3%** above bank of England Base Rate (**minimum £10.00**) per 30 days or part thereof applicable on the date of issue of the invoice for interest, and/or may rescind its Licence to Use and recover damages. All sums payable to GDP shall be paid in pounds sterling, and are exclusive of VAT thereon, if any, which shall be charged in addition.

12. Unless otherwise agreed in writing by GDP, the Client shall ensure that any Picture Reproduced has the exact **credit line** as stated on the Delivery Note, or supplied on or in relation to the Picture, such credit line to appear either immediately adjacent to or within the reproduction and to be reasonably prominent, or with other acknowledgements in the publication. If any Picture Reproduced by the Client omits the credit line, an **additional fee** equal to the original Reproduction fee invoiced shall be payable by the Client, who acknowledges that such is fair and reasonable for GDP's loss of recognition and lack of copyright protection resulting from omission of, or improper, copyright notice/credit line.

12.1 Two **proofs** of any publication or the relevant pages thereof containing any Pictures, or two samples of any product on which Pictures are Reproduced, are to be furnished to GDP by the Client free of charge within two weeks of publication or distribution.

13. GDP shall be entitled to terminate this Agreement (including any rights set out in the Licence to Use) with immediate effect by notice in writing if the Client is in breach of any of Clauses 8. to 8.4 inclusive, or is in material breach of any other Clause of these Terms and fails to remedy the breach within 7 days of receipt of such notice, or if the Client becomes insolvent, has a receiver appointed over any of its assets, is the subject of an administration order, enters into any arrangements with its creditors or goes bankrupt. Termination does not affect the accrued rights and obligations of GDP and the Client at the date of termination. On termination, the Client shall forthwith return to GDP all copies of Pictures in its possession, and shall delete any digital, electronic or other intangible copies of Pictures from its computer and telecommunications systems.

14. This Agreement shall be construed and interpreted in accordance with English law, and the Client accepts the jurisdiction of the English Courts.