

Terms & Conditions – Eric Kruszewski

[1] Definition: "Image(s)" means all visual representations furnished to Client by Eric Kruszewski, known from this point on as "Photographer / Videographer", whether captured, delivered, or stored in photographic, magnetic, optical, electronic, or any other media. Unless otherwise specified on the front of this document, Photographer / Videographer may deliver, and Client agrees to accept, Images encoded in an industry-standard data format that Photographer / Videographer may select, at a resolution that Photographer / Videographer determines will be suitable to the subject matter of each Image and the reproduction technology and uses for which the Image is licensed. It is Client's responsibility to verify that the digital data (including color profile, if provided) are suitable for reproduction of the expected quality and color accuracy, and that all necessary steps are taken to ensure correct reproduction. If the data are not deemed suitable, Photographer / Videographer's sole obligation will be to replace or repair the data, but in no event will Photographer / Videographer be liable for poor reproduction quality, delays, or consequential damages. Unless otherwise specifically provided elsewhere in this document, Photographer / Videographer has no obligation to retain or archive any of the Images after they have been delivered to Client. Client is responsible for sending an authorized representative to the assignment or for having an authorized representative review the images remotely during the assignment. If no review is made during the assignment, Client is obligated to accept Photographer / Videographer's judgment as to the acceptability of the Images.

[2] Rights: All Images and rights relating to them, including copyright and ownership rights in the media in which the Images are stored, remain the sole and exclusive property of Photographer / Videographer. Unless otherwise specifically provided elsewhere in this document, any grant of rights is limited to a term of one (1) year from the date hereof and to usage in print (conventional non-electronic and non-digital) and or digital media in North America. Unless otherwise specifically provided elsewhere in this document, no image licensed for use on a cover of a publication may be used for promotional or advertising purposes without the express permission of Photographer / Videographer and the payment of additional fees. No rights are transferred to Client unless and until Photographer / Videographer has received payment in full. The parties agree that any usage of any Image without the prior permission of Photographer / Videographer will be invoiced at three times Photographer / Videographer's customary fee for such usage. Client agrees to provide Photographer / Videographer with three copies of each published use of each Image not later than 60 days after the date of first publication of each use. If any Image is being published only in an electronic medium, Client agrees to Provide Photographer / Videographer with an electronic tearsheet, such as a PDF facsimile or URL of the published use of each such photograph, within fifteen (15) days after the date of first publication of each use. Unless otherwise specifically provided elsewhere in this document, all usage rights are limited to print media, and no digital usages of any kind are permitted. This prohibition includes any rights or privileges that may be claimed under §201(c) of the Copyright Act of 1976 or any similar provision of any applicable law. Digital files may contain copyright and other information embedded in the header of the image file or elsewhere; removing and/or altering such information is strictly prohibited and constitutes violation of the Copyright Act. All fees and expenses payable under this agreement are required irrespective of whether Client makes actual use of the Images or the licenses to use them. Unless specifically provided elsewhere in this document, no reprographic, reprint, republication or other secondary reproduction usages may be made, and usage rights are granted only for one-time, English language North American editorial print editions of the publication listed on the front of this document and six month searchable archive use on the website of that publication.

[3] Return and Removal of Images: Client assumes insurer's liability (a) to indemnify Photographer / Videographer for loss, damage, or misuse of any Images, and (b) to return all Images prepaid and fully insured, safe and undamaged, by bonded messenger, air freight, or registered mail. Unless the right to archive Images has been specifically granted by Photographer / Videographer on the front of this document, Client agrees to remove and return or destroy all digital copies of all Images. All Images shall be returned, and all digital files created by or on behalf of Client containing any Images shall be delivered to Photographer / Videographer, deleted or destroyed, within thirty (30) days after the later of: (1) the final licensed use as provided in this document, and (2) if not used, within thirty (30) days after the date of the expiration of the license. Failure to return Images on time will result in loss to Photographer / Videographer due to his resulting inability to license such Images. Client therefore agrees to pay a holding fee of five dollars and fifty cents (\$5.50) per day for each image from the return date until the day on which the Images are actually received by Photographer / Videographer. Client assumes full liability for its principals, employees, agents, affiliates, successors, and assigns (including without limitation independent contractors, messengers, and freelance researchers) for any loss, damage, delay in returning or deleting, failure to return, or misuse of the Images.

[4] Loss or Damage: Reimbursement by Client for loss or damage of each original photographic transparency or film negative ("Original[s]") shall be in the amount of One Thousand Five Hundred Dollars (\$1,500), or such other amount if a different amount is set forth next to the lost or damaged item on the reverse side or attached schedule. Reimbursement for loss or damage of each non-digital duplicate image shall be in the amount of Two Hundred Dollars (\$200). Reimbursement for loss or damage of each digital file shall be in the amount of Two Hundred Dollars (\$200). Reimbursement by Client for loss or damage of each item other than as specified above shall be in the amount set forth next to the item on the reverse side or attached schedule. Photographer / Videographer and Client agree that said amount represents the fair and reasonable value of each item, and that Photographer / Videographer would not sell all rights to such item for less than said amount. Client understands that each Original is unique and does not have an exact duplicate, and may be impossible to replace or re-create. Client also understands that its acceptance of the stipulated value of the Images is a material consideration in Photographer / Videographer's acceptance of the terms and prices in this agreement.

[5] Photo Credit: All published usages of Images will be accompanied by written credit to Photographer / Videographer or copyright notice. If a credit is not actually provided, Client agrees that the amount of the invoiced fee will be subject to a three-times multiple as reasonable compensation to Photographer / Videographer for the lost value of the credit line.

[6] Infringements: As stated in [2] above, all Images and rights relating to them, including copyright and ownership rights in the media in which the Images are stored, remain the sole and exclusive property of Photographer / Videographer. Any usage of images without a valid license will bind the user to these terms and as a result a minimum usage fee of \$400 as well as a 250% illegal use fee will apply. The user will also be required to pay any applicable banking fees for payment via electronic transfer and will be required to sign a settlement agreement.

[7] Alterations: Client will not make or permit any alterations, including but not limited to additions, subtractions, or adaptations in respect of the Images, alone or with any other material, including making digital scans unless specifically permitted on the reverse side. Client may not make or permit any alterations, including but not limited to additions, subtractions, or adaptations in respect of the Images, alone or with any other material, including making digital scans unless specifically permitted on the reverse side, except that cropping and alterations of contrast, brightness, and color balance, consistent with reproduction needs may be made. Client may make or permit any alterations, including but not limited to additions, subtractions, or adaptations in respect of the Images alone or with any other material, including making digital scans, subject to the provisions as stated in [8] below.

[8] Indemnification: Client will indemnify and defend Photographer / Videographer against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of the creation or any use of any Images or arising out of use of or relating to any materials furnished by Client. Unless delivered to Client by Photographer / Videographer, no model or property release exists, and it is Client's responsibility to obtain the necessary permissions for usages that require any model or property releases not delivered by Photographer / Videographer. It is Client's sole

responsibility to determine whether any model or property releases delivered by Photographer are suitable for Client's purposes. Photographer / Videographer's liability for all claims shall not exceed in any event the total amount paid under this invoice.

[9] Assumption of Risk: Client assumes full risk of loss or damage to or arising from materials furnished by Client and warrants that said materials are adequately insured against such loss, damage, or liability.

[10] Transfer and Assignment: Client may not assign or transfer this agreement or any rights granted under it. This agreement binds Client and inures to the benefit of Photographer / Videographer, as well as their respective principals, employees, agents, and affiliates, heirs, legal representatives, successors, and assigns. Client and its principals, employees, agents, and affiliates are jointly and severally liable for the performance of all payments and other obligations hereunder. No amendment or waiver of any terms is binding unless set forth in writing and signed by the parties. However, the invoice may reflect, and Client is bound by, Client's oral authorizations for additional Images, fees and expenses that could not be confirmed in writing because of insufficient time or other practical considerations. This agreement incorporates by reference the Copyright Act of 1976, as amended. It also incorporates by reference those provisions of Article 2 of the Uniform Commercial Code that do not conflict with any specific provisions of this agreement; to the extent that any provision of this agreement may be in direct, indirect, or partial conflict with any provision of the Uniform Commercial Code, the terms of this agreement shall prevail. To the maximum extent permitted by law, the parties intend that this agreement shall not be governed by or subject to the UCITA of any state. Photographer / Videographer is an independent contractor and not an employee. If Photographer / Videographer is deemed under any law to be an employee of Client, and if the Images are therefore considered works made for hire under the U.S. Copyright Act, Client hereby transfers the copyright to all such Images to Photographer / Videographer. Client agrees to execute any documents reasonably requested by Photographer / Videographer to accomplish, expedite or implement such transfer.

[11] Disputes: Except as provided in [11] below, any dispute regarding this agreement shall, at Photographer / Videographer's sole discretion, either:

(a) be arbitrated in Photographer / Videographer's City, Photographer / Videographer's State, under rules of the American Arbitration Association and the laws of Photographer / Videographer's State; provided, however, that irrespective of any specific provision in the rules of the American Arbitration Association, the parties are not required to use the services of arbitrators participating in the American Arbitration Association or to pay the arbitrators in accordance with the fee schedules specified in those rules. Judgment on the arbitration award may be entered in any court having jurisdiction. Any dispute involving \$5,000 or less may be submitted without arbitration to any court having jurisdiction thereof.

OR

(b) be adjudicated in Photographer / Videographer's City, Photographer / Videographer's State under the laws of the United States and/or of Photographer / Videographer's State.

(c) In the event of a dispute, Client shall pay all court costs, Photographer / Videographer's reasonable legal fees, and expenses, and legal interest on any award or judgment in favor of Photographer / Videographer.

[12] Federal Jurisdiction: Client hereby expressly consents to the jurisdiction of the Federal courts with respect to claims by Photographer / Videographer under the Copyright Act of 1976, as amended, including subsidiary and related claims.

[13] Overtime: In the event a shoot extends beyond eight (8) consecutive hours, Photographer / Videographer may charge for such excess time of assistants and freelance staff at the rate of 1 1/2 times their hourly rates.

[14] Reshoots: Client will be charged 100 percent fee and expenses for any reshoot required by Client. For any reshoot required because of any reason outside the control of Client, specifically including but not limited to acts of God, nature, war, terrorism, civil disturbance or the fault of a third party, Photographer / Videographer will charge no additional fee, and Client will pay all expenses. If Photographer / Videographer charges for special contingency insurance and is paid in full for the shoot, Client will not be charged for any expenses covered by insurance. A list of exclusions from such insurance will be provided on request.

[15] Assignment Cancellations and Postponements: Cancellations: Client is responsible for payment of all expenses incurred up to the time of cancellation of the assignment, plus 50 percent of Photographer / Videographer's fee; however, if notice of cancellation is given less than two (2) business days before the shoot date, Client will be charged 100 percent fee. Postponements: Unless otherwise agreed in writing, Client will be charged a 100 percent fee if postponement of the assignment occurs after Photographer / Videographer has departed for location, and 50 percent fee if postponement occurs before departure to location. Fees for cancellations and postponements will apply irrespective of the reasons for them, specifically including but not limited to weather conditions, acts of God, nature, war, terrorism, civil disturbance, and the fault of a third party.