

Mark Stothard

Terms and Conditions of online sales of Licences to use Images

Please read these terms and conditions (“**Terms**”) carefully as they affect your legal rights and liabilities. By making a purchase electronically via this Website, you agree to be bound by these Terms.

Please click on the button “I accept” at the end of these Terms if you accept them. Please note that if you do not accept these Terms, you will not be able to Order and purchase Images from us.

1. Definitions and Interpretations

1.1. In these Terms:

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|---------------------|---|
| “Contact Address” | means our address at 1 Summerland Place, Minehead, TA24 5BT |
| “Contract” | means the contract (on these Terms) that is concluded between you and us when we confirm to you that your Order has been accepted by us; |
| “Consumer” | means any natural person who, in entering into a Contract is acting for purposes which are outside his business; |
| “Consumer Purchase” | means purchases made by a Consumer; |
| “Images” | means images made available electronically via this Website; |
| “Order” | means an order for a licence to use an Image or Images for which such a licence is available to purchase via this website, such order placed by you electronically via this Website and subject to these Terms; |
| “Period” | means the period of time stated in the Order; |
| “Purpose” | means the purpose stated in the Order; |
| “Rights” | means the non-exclusive, non-transferable, non-assignable right by way of licence to use the Images for the Purpose and for the Period |
| “Website” | means this website that can be found at the domain name address https://markstothard.com |
| “Working Day” | means Monday to Friday between the hours of 9 am and 5 pm but not any day which is a public holiday in the UK. |

1.2. In these Terms references to in writing shall include e-mail.

2. Product Information

2.1. We have made all reasonable efforts to accurately display the colours and designs of the Images for sale on this Website. You acknowledge and accept that designs and colours shown on this Website are approximate only. Colours in particular may vary due to your own computer's visual settings and hardware.

3. The Formation of the Contract Between You and Us

3.1. How to Order

3.1.1. Please use the "Shopping Cart" system on this Website to place an Order. Once you have placed an order we will contact you by email confirming receipt of your Order. This confirmation does not mean that your Order has been accepted.

3.2. Price

3.2.1. The prices payable for the Images will be the price shown when you place your Order.

3.2.2. The prices payable for the Images are inclusive of VAT.

3.2.3. Prices are subject to change without notice but changes will not affect Orders which have already been received and accepted by us.

3.2.4. Despite our best efforts, some of the Images listed on this Website may be incorrectly priced. We are under no obligation to provide Images to you at an incorrect (lower) price if the pricing error is obvious and could reasonably have been recognised by you as a pricing error.

3.3. Payment

We must receive payment in full for the Images before your order can be accepted and we will notify you when we accept your Order.

3.4. What Happens Next

Once we have accepted your Order you will be permitted to download the Images.

3.5. Licence

In consideration of payment in full by you for the Images we grant the Rights to you. Once the Rights expire, if you wish to continue to use the Images you must enter into a new licence agreement with us on terms and at a price to be agreed.

4. Right for you to cancel (Consumer Purchases only)
 - 4.1. If you have made a Consumer Purchase you may cancel your Order for any Images at any time before the end of the 7th (seventh) Working Day from the date you received the Images:
 - 4.1.1. In order to exercise your right under sub-clause 5.1 you must notify us of your intention to cancel in writing.
 - 4.1.2. If you have received physical copies of the Images from us before you cancel your Order you must return all of these copies to us at your own cost and risk within 30 (thirty) days of the date of your notice of your intention to cancel. You must also destroy any electronic copies of the Images in your possession and/or control.
 - 4.1.3. The returned Images must be received by us in the condition they were in when delivered to you. We shall be entitled to recover any direct costs of having to recover the Images from you and may set such costs off against the amount to be re-credited to you. For example, if the cost of recovering the Images from you exceeds the amount paid by you, you will owe us the cost of returning the goods, less the amount you have already paid.
 - 4.1.4. All sums to be re-credited to you in respect of a cancelled Order will be re-credited to the same credit/debit card you used to place your Order
5. Cancellation by Us
 - 5.1. We reserve the right to cancel a Contract with you if:
 - 5.1.1. We have insufficient stock to deliver physical copies of the Images you have ordered;
 - 5.1.2. We do not deliver to your area or country;
 - 5.1.3. If one or more of the Images you ordered was listed with incorrect product information, price and/or description for whatever reason; or
 - 5.1.4. If we have reason to believe that you will not comply with any of these Terms.
6. Alterations
 - 6.1. No alterations to the visual appearance or otherwise of any Images shall be made without our prior written consent.
7. Copyright Protection
 - 7.1. You must ensure that all copies of the Images published by you bear the symbol "©" accompanied by the text "Mark Stothard" placed in

such manner and location as to give reasonable notice of the claim of copyright in the Images.

8. Intellectual Property

- 8.1. You acknowledge that we own all intellectual property rights in the Images.
- 8.2. Mark Stothard asserts all legal and moral rights in the Images, including without limitation the right to be identified as the author of the Images.

9. Termination

- 9.1. We may terminate the Rights granted to you pursuant to any Contract if
 - 9.1.1. you use the Images in a defamatory, offensive and/or derogatory manner and/or in any other manner which we deem would affect the reputation and/or goodwill of Mark Stothard;
 - 9.1.2. you otherwise breach any of these Terms; or
 - 9.1.3. you use the Images in a manner outside of the Rights granted to you.
- 9.2. On termination all Rights granted to you you will cease use of the Images and you must return all physical copies of the Images in your possession and/or control to us and destroy immediately any electronic copies of the Images in your possession and/or control.

10. Limitation of Liability

- 10.1. The following provisions of this clause set out the entire financial liability of us to you (including any liability for the acts or omissions of our employees, directors and officers) in respect of any breach of any Contract, (or any part thereof) and for any other liability to you whatsoever (including any liability in tort) under or in connection with any contract.
- 10.2. Notwithstanding any other provision of a Contract, our liability under or in connection with a Contract shall not be excluded or reduced to the extent that it arises in respect of the following matters:
 - 10.2.1. for death or personal injury caused by negligence;
 - 10.2.2. for fraud or fraudulent misrepresentation, or in respect of any wilful misconduct or wilful concealment, or in respect of any deliberate and malicious act or omission of us;
 - 10.2.3. for any other matter for which it would be unlawful for us to exclude or reduce or attempt to exclude or reduce our liability.

10.3. Subject to sub-clause 11.2, we shall not have any liability to you (including any liability in tort) under or in connection with any Contract for any:

10.3.1. loss of profits or anticipated savings;

10.3.2. loss of revenue;

10.3.3. loss of or damage to reputation or goodwill;

10.3.4. loss of opportunity;

10.3.5. wasted management or other staff time; or

10.3.6. losses or liabilities under or in relation to any other contract;

(in each case whether direct, indirect, special and/or consequential);
or

10.3.7. for any other indirect, special and/or consequential loss.

10.4. Subject to sub-clause 11.2, the total liability of us to you in contract, tort (including negligence and breach of statutory duty), misrepresentation, and/or otherwise howsoever arising under or in connection with a Contract shall be limited to the equivalent of the total amount of the price paid by you to us pursuant to that Contract for the use of any Images pursuant to Contract.

11. Entire Agreement

11.1. Each Contract constitutes the entire agreement between the parties about the subject matter of that Contract and supersedes all earlier understandings and agreements between any of the parties and all earlier representations by any party about such subject matter.

11.2. The parties represent that they have not entered into any Contract in reliance upon any representation, warranty or promise and no such representation or warranty or any other term is to be implied in it whether by virtue of any usage or course of dealing or otherwise except as expressly set out in it.

11.3. If a party has given any representation, warranty or promise then, (except to the extent that it has been set out in a Contract) the party to whom it is given waives any rights or remedies which it may have in respect of it.

11.4. Any amendment to or variation of a Contract shall not be binding on the parties unless and until it is set out in writing and signed by or on behalf of both of the parties.

11.5. This clause shall not exclude the liability of a party for fraud or fraudulent misrepresentation or concealment or any resulting right to rescind any Contract.

12. Notices

12.1. All notices from you to us must be sent by recorded delivery to the Contact Address.

13. The Contracts (Rights of Third Parties) Act 1999

13.1. A person who is not a party has no right to enforce any term of a Contract under the Contracts (Rights of Third Parties) Act 1999.

14. Waiver and Remedies

14.1. A waiver of any term, provision or condition of, and any consent or approval granted under a Contract will be valid only if it is in writing, signed by the party giving the waiver or granting the consent or approval. Any such waiver, consent or approval will be valid only in the particular instance and for the particular purpose for which it is given and will not constitute a waiver of any other right or remedy.

14.2. Any failure (in whole or in part) to exercise or delay in exercising any right, power or remedy ("Remedy") available under a Contract or in law will not constitute a waiver of that or any other Remedy nor will any single or partial exercise of any Remedy preclude any other or further exercise of that or any other Remedy. The rights and remedies provided by a Contract are cumulative and (unless otherwise expressly stated in a Contract) may be exercised without excluding any other rights or remedies available in law.

15. Invalidity

15.1. If any part of a Contract is unenforceable (including any provision in which we exclude our liability to you) the enforceability of any other part will not be affected.

16. Governing Law and Jurisdiction

16.1. All Contracts (and any disputes or claims relating to them, their enforceability or their termination) are to be governed and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.