

## TERMS & CONDITIONS

- (1) "Media" means all material furnished by Photographer hereunder, whether motion picture film, videotape, digital images/data, transparencies, negatives, prints or otherwise. Photographer means Jody Helzer Pesapane or Liquid Blue Media.
- (2) Submission is for examination only. Media may not be reproduced, copied, projected, or used in any way without (a) express written permission on Photographer's invoice stating the rights granted and the terms thereof and (b) payment of said invoice or any subsequent invoice. The reasonable and stipulated fee for any other such use shall be three (3) times the Photographer's normal fee for such usage. Unless otherwise stated in the Delivery Memo, after 14 days, the following holding fees are charged until return: Five Dollars (\$5.00) per week per transparency, footage element, or digital media item (Zip Disks, PhotoCDs, CD-Rs, etc.) and One Dollar (\$1.00) per week per print.
- (3) Except as otherwise specifically provided herein, all Media and rights therein, including copyright, remain the sole and exclusive property of the Photographer. Any additional uses require the prior written agreement of the Photographer on terms to be negotiated. Unless otherwise provided herein, any grant of rights is limited to one (1) year from the date hereof for the territory of the United States.
- (4) Client assumes insurer's liability (a) to indemnify Photographer for loss, damage, or misuse of any Media and (b) to return all Media prepaid, fully insured, safe and undamaged, by bonded messenger, air freight, or registered mail, within thirty (30) days after the first use thereof, but in all events (whether published or unpublished) within forty-five (45) days after the date hereof. Client assumes full liability for its principals, employees, agents, affiliates, successors and assigns (including without limitation messengers and free-lance researchers) for any loss, damage, or misuse of the Media.
- (5) Time is of the essence for receipt of payment and return of Media. No rights are granted until timely payment is made. Payment is required within thirty (30) days of invoice; two (2%) percent per month service charge on unpaid balance is applied thereafter. Adjustment of amount of terms must be requested within ten (10) days of invoice receipt. Failure to pay any invoice voids any grant of rights. Photographer and Client agree that any unauthorized use without a grant of rights, or after revocation of grant of rights, for non-payment or any other reason, is Willful Infringement as defined under Federal Copyright Law.
- (6) Reimbursement by Client for loss or damage of each original transparency shall be in the amount of One Thousand Five Hundred Dollars (\$1,500), or such other amount set forth next to said item on the Delivery Memo which accompanied said item when originally delivered to Client. Reimbursement by Client for loss or damage of each other item shall be in the amount set forth next to said item on the Delivery Memo which accompanied said item when originally delivered to Client. Photographer and Client agree that said amount represents the fair and reasonable value of each item, and that Photographer would not sell all rights to such item for less than said amount. Failure to return Media within sixty (60) calendar days of delivery to Client shall constitute loss. Reimbursement by Client for loss shall be due and payable at that time.
- (7) Photographer's copyright notice "© 2004 (Photographer's Name)/Liquid Blue Media" must accompany each use as an adjacent credit line in print use or motion picture with credits. Invoice amount will be tripled for each use if said credit is not provided.
- (8) Client will not make or permit any alterations, additions, or subtractions in respect of the Media, including without limitation any digitalization or synthesization of the photographs, alone or with any other material, by use of computer or other electronic means or by any other method or means now or hereafter known.
- (9) Client will indemnify and defend Photographer against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of any use of any Media for which no release was furnished by Photographer, or any Media which are altered by the Client. Unless so furnished, no release exists. Photographer's liability for all claims shall not exceed in any event the total amount paid under this invoice.
- (10) Client shall provide three (3) free copies of uses appearing in print and a semi-annual statement of sales and subsidiary uses for photographs appearing in books, or an audit VHS copy and EDL of the finished motion picture/video.
- (11) Client may not assign or transfer this agreement, or any rights granted hereunder. This agreement binds and inures to the benefit of Photographer, Client, Client's principals, employees, agents, and affiliates and their respective heirs legal representatives, successors and assigns. Client and its principals, employees, agents and affiliates are jointly and severally liable for the performance of all payment and other obligations hereunder. No amendment or waiver of any terms is binding unless set forth in writing and signed by the parties. This agreement incorporates by reference Article 2 of the Uniform Commercial Code, and the Copyright Act of 1976, as amended.
- (12) Except as provided in (13) below any dispute regarding this agreement shall be arbitrated in Ventura, California under rules of the American Arbitration Association and the laws of California. Any dispute involving Two Thousand Five Hundred Dollars (\$2,500) or less may be submitted without arbitration to any court having jurisdiction thereof. Client shall pay all arbitration and court costs, reasonable legal fees, and expenses, and legal interest on any award or judgment in favor of the Photographer.
- (13) Client hereby expressly consents to the jurisdiction of the Federal courts with respect to claims by Photographer under the Copyright Act of 1976, as amended.