

## **EMKAIMODELS 2023**

### *Terms & Conditions for Booking Models*

#### **1. Terms and conditions**

As required by the Department of Business, Innovation and Skills (BIS) regulations, the Agency's booking confirmation form, containing the specific terms of the booking, must be signed and returned by the client. The failure to sign and/or return the booking confirmation form whilst proceeding with the booking will be deemed to be an acceptance by the client of these terms and conditions and they shall apply to and govern the booking between the Agency and the client.

Any amendment and/or variations made to the booking confirmation form by the client shall not be valid and binding unless the Agency has agreed to such amendment and/or variation in advance and confirmed such agreement by signing the booking confirmation form after the amendment and/or variation has been included on the booking confirmation form.

In the event of any inconsistency or contradiction between these terms and conditions and the booking confirmation form these terms and conditions shall prevail.

#### **2. Booking Fees**

##### 2.1 Permitted use

Unless agreed otherwise and included on the booking confirmation form, booking fees provide an entitlement and right for the client to use one image via a single published medium for one year from the date of the booking, in the United Kingdom only, for the initial permitted use. Please note that such permitted use and entitlement is strictly subject to payment in full of all fees owed to the Agency.

##### 2.2 Daily/hourly rate

Booking fees are charged by the full day, (8 hours), half day (4 hours) or by the hour, or on an alternative basis, for example, a set fee for a catwalk show. Details will be set out in the booking confirmation.

A "day" is an 8 hour period between 9am and 6pm (9am – 5pm or 10am – 6pm). An extra hour between 9am and 6pm is charged at the normal rate – the appropriate overtime rate is charged before 9am and after 6pm. Overtime is charged at one and a half times the hourly rate. Saturdays are charged at one and a half times the hourly rate and Sundays are charged at double the hourly rate.

##### 2.3 Overtime

Overtime rates apply at any time in excess of any 8 hour period including any time outside 09:00 and 17:00 or 10:00 and 18:00, Monday to Friday and on all bookings lasting longer than 8 hours. Overtime rates will be charged as follows:

2.3.1 Work on Saturdays between 09:00 and 24:00 and between 18:00 hours and 24:00 hours on Mondays to Fridays (excluding bank and public holidays) is charged to the client at one and a half times the standard hourly rate as set out in the booking confirmation form.

2.3.2 A special rate is negotiated for night work between 2400 hours and 0900 hours.

2.3.3 Work on Sundays and bank and public holidays is charged to the client at double the standard rate as set out in the booking confirmation form.

## 2.4 Travel

Any time spent by the model travelling to or from a client's venue will be charged at £10.00 per hour; this applies to any travel outside a three mile radius of Piccadilly Gardens.

## 2.5 Fitting Fees

Any time spent by the model for fittings is charged at £35 per hour, with a minimum charge to the client of £70-00. Please see rate sheet for full details.

## 2.6 Additional Expenses

All expenses incurred by the Agency on the clients' behalf will be charged to the client and will include an uplift of 12.5% of the total amount of the expenses.

## 2.7 Location Bookings

2.7.1 When a location booking is made, a client must provide transport for the model both to the booking location and back again unless agreed otherwise. If the client fails to provide such transport then the Agency shall be entitled to re-charge the cost of the transport procured for the model in accordance with section 2f). If a model on location is prevented from returning to any location to work, half the daily fee will be charged to and payable by the client.

2.7.2 When a location booking is made, the client will make a health and safety assessment of the location and shall notify the Agency of any potential risks and how these have been mitigated. The client acknowledges that at all times the model's health and safety is of paramount importance and shall ensure that the highest standards of health and safety are complied with whilst on any location bookings.

## **3. Additional Fees**

To be agreed at the time of the booking or before any additional usage

### 3.1 Usage

Additional fees are payable for the right to use the model's image or reproductions, or adaptations of, or drawings derived from that image, or any other representation of it, either complete or in part whether alone or in conjunction with any wording or other images, photographs, drawings or anticipated purposes other than the initial permitted use, details of which will be set out in the booking confirmation form, e.g. packs, posters, showcards, CD covers, swing tickets etc. For the avoidance of doubt, additional fees are payable for the right to use the model's image or reproductions, or adaptations of, or drawings derived from that image, or any other representation of it, either complete or in part whether alone or in conjunction with any wording or other images, photographs, drawings online or in any digital media including but not limited to Twitter, Facebook, MySpace, YouTube, Flickr, Blogs or other social networking websites or media. Unless otherwise agreed, the additional fees cover the right to use one image for one year from the date of booking, in the United Kingdom only, for the permitted use or uses or purposes agreed between the Agency and the client. Under no circumstances will each additional usage fee be less than the model's advertising day rate as determined by the Agency unless determined otherwise by the Agency in its absolute discretion.

### 3.2 Territory

Additional fees are also payable for the right to use the model's image or reproductions etc, as set out in section 3a) above for all known or anticipated territories other than the United Kingdom. Unless otherwise agreed the additional fees cover the right to use one image for one year or one season (as determined by the Agency at the date of booking) from the date of booking, in the territory or territories agreed and stipulated on the booking form. Under no circumstances will each usage fee be less than the model's advertising day rate as determined by the Agency unless determined otherwise by the Agency in its absolute discretion.

### 3.3 Other services

Additional fees are also payable for other services to be supplied by the model, for example, personal appearances for PR purposes. Fees for such services will be negotiated on a case by case basis between the client and the Agency.

#### **4. Agency Fees**

##### **4.1 All bookings apart from equity contract TV commercials**

The agency charges a supplement of 20% on all fees including without limitation hourly, daily and overtime fees and all fees for the right to use and all fees negotiated for any other service to be supplied by the model. Both agency fees and model fees will be invoiced by the Agency.

##### **4.2 Equity contract TV commercials in the United Kingdom**

The fee negotiated by the Agency is the model's fee from which an agency commission will be deducted at 20% of the invoice total.

##### **4.3 Non equity contract TV commercials worldwide**

The model disbursement and agency fees will be charged in accordance with 4a) and applies to all commercials shot for use outside the UK irrespective of where the fee is paid.

##### **4.4 Value added tax**

All sums payable under these terms and conditions are exclusive of VAT and any other similar or equivalent taxes or duties which shall be payable in full without set off by the client.

#### **5. Invoicing**

5.1 On all invoices payment is required to be made by the client within 30 days of the date of the invoice unless an alternative period is agreed in writing by the Agency. In all cases, the person booking the model is the client, who will be invoiced and solely responsible for payment, unless otherwise agreed in writing at the time of booking. The Agency reserves the right in its discretion to invoice the 'ultimate client', (eg. designer/ manufacturer/owner of the product in question). For example, this may be done if the client is booking on behalf of the ultimate client, in which case the client and the ultimate client are jointly and severally liable to pay all of the fees and settle the invoice accordingly. All fees for usage are for the right to use the model's image and, once agreed, are payable whether or not the right is exercised. Unless the Agency specifically agrees otherwise, in writing, no usage for the model's image is permitted until payment is made in full. The agency reserves the right to alter payment terms if it deems appropriate, prior to booking.

5.2 If the client fails to pay in full on the due date any amount which is payable to the Agency, without prejudice to any other right or remedy of the Agency, the amount outstanding shall bear interest both before and after any judgment at five per cent per annum over Barclays Bank plc base rate from time to time from the due date until up to and including the date that payment is made in full and such interest shall be compounded and accrued on a daily basis.

5.3 In the event that the client is providing the services on behalf of or to a third party end user, in entering into these terms and conditions the client is acting in its capacity as the agent of the third party end user and the client shall ensure that the third party end user:

5.3.1 enters into an agreement with the client on the same terms as these terms and conditions;

5.3.2 acknowledges its obligations to the Agency including but not limited to the obligation to pay the Agency within 30 days of the date of any invoice received from the Agency; and

5.3.3 acknowledges that the third party end user may not use the images until payment is received by the Agency and that at all times the third party end user is subject to any restrictions as to use of the images including but not limited to territorial restrictions and restrictions as to media in which the images may be used.

5.4 Any fees received by the client from the third party end user relating to any of the rights or benefits conferred on the client by these terms and conditions shall be deposited in a designated Agency account by the client (the Third Party End User Fees). The Third Party End User Fees shall be held on trust for the Agency as beneficiary until such time as all outstanding fees owed by the client are paid in accordance with the terms of these terms and conditions.

## **6. Exclusivity Fees**

Unless agreed otherwise the model is supplied to the client by the Agency on a non-exclusive basis and the model shall be free to provide similar and/or competing services to any third party and/or competing product or brand of the client. An additional fee will need to be agreed when the use of the model's image or the service to be supplied by a model in relation to a product is required on an exclusive or semi-exclusive (for example sector specific exclusivity) basis which precludes supplying services or allowing the use of the model's image for competing and/or particular sector of products or within a particular territory. A model can supply services to and allow use of the model's image by any competitor unless such an exclusivity fee is negotiated and paid by the client. It is the client's responsibility to carry out any research and check whether the model supplied has undertaken or is booked to undertake any conflicting work.

## **7. Provisional Bookings**

Provisional bookings will be automatically cancelled if they are not confirmed by the client (by signing the booking confirmation form) within 24 hours of the proposed booking.

### **8. Cancellation**

#### **8.1 Cancellation of booking by the Client**

8.1.1 Within 24 hours of the booking call time the full booking fee will be charged and payable by the client unless the same model is booked within 24 hours of the cancellation in which case half the booking fee will be charged and payable by the client.

8.1.2 Outside 24 hours of the booking call time but within 48 hours of the booking call time of the booking date then half the booking fee will be charged and payable by the client.

8.1.3 The full booking fee will be charged and payable by the client for bookings of more than three days duration: within a period equal to or less than the length of the booking, then Saturdays, Sundays and bank and public holidays are excluded for the purpose of determining the cancellation notice period.

#### **8.2 Cancellation of booking by the Agency**

8.2.1 Should the Agency want to cancel a booking then it shall use reasonable endeavours to provide the client with reasonable notice, take steps to offer to the client a suitable replacement and/or substitute and take such other reasonable steps as are reasonably practicable to mitigate against such cancellation.

8.2.2 In any event the Agency shall be entitled to cancel a booking at any time and for any reason prior to the booking date without liability to the client and the client will procure the necessary insurance cover with a reputable insurance provider to protect against such cancellation and any associated liability and the Agency shall not be liable to the client for any costs incurred as a result of such cancellation.

## **9. Weather Related Cancellations**

On the first occasion of cancellation half the booking fee is charged and payable by the client unless the client fails to cancel in time to prevent the model's attendance in which case the full booking fee is charged and payable by the client. On the occasion of the second cancellation and any subsequent cancellations the full booking fee is charged and payable by the client.

## **10. Meals**

Clients are responsible for the provision of all meals and beverage requirements of the models (taking into account dietary requirements) whilst the models are providing services to the client on all bookings (see section 2d).

## **11. Model Care and Safety**

11.1 The clients shall ensure that the model is treated with respect and professionalism and that the client takes all steps necessary to ensure that the safety, health and well being of the model is protected and maintained at all times whilst providing services to the client. Such steps shall include

without limitation:

- 11.1.1 ensuring that the venue for the provision of the services and the working conditions are safe and secure and allow the model to provide the services in compliance with all health and safety standards, regulations, codes and laws;
  - 11.1.2 allowing the model to take suitable and regular rest periods, to ensure the model is able to maintain suitable amounts of rest and refreshment whilst delivering the services;
  - 11.1.3 providing adequate levels of insurance cover to safeguard the health and safety and future earnings of the model whilst the model is delivering the services and travelling to and from the client's venue as if he/she were an employee of the client;
  - 11.1.4 ensuring that all of the people and organisations which are engaged by the client in relation to the delivery of the services are suitably qualified, experienced and professional;
  - 11.1.5 ensuring that no one imposes upon the model any action or activity which is either dangerous, degrading, unprofessional or demeaning to the model;
  - 11.1.6 ensuring that the services are delivered and the model is treated in accordance with The Association of Model Agents' Code of Practice; and
  - 11.1.7 providing the model with an appropriate changing and dressing area to ensure that the model can prepare for the provision of the services and also maintains his/her privacy.
- 11.2 Always include a credit as "model's name" @emkaimodels", wherever a credit is applied.

## 12. Warranties

12.1 The client warrants and represents to the Agency that:

- 12.1.1 it has full capacity to enter into these terms and conditions and perform its obligations under these terms and conditions;
- 12.1.2 the booking form is executed by a duly authorised representative of the client;
- 12.1.3 it will take all steps necessary to ensure that the model is protected and treated in accordance with all applicable laws, good industry practice and section 11 above;
- 12.1.4 it has all necessary permits, licences and consents to enter into and to perform its obligations under these terms and conditions and such obligations shall be performed in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments (including but not limited to any employment law or health and safety requirements in effect from time to time; and
- 12.1.5 it will promptly disclose to the Agency in writing all necessary information (including without limitation the location and length of the shoot and requirements for any foreign travel) and details relating to the provision of the services to enable the Agency to ensure that the model is suitably prepared and able to perform the services.

## 13. Indemnity

13.1 The client shall indemnify the Agency and keep the Agency indemnified against all costs, expenses, damages and losses suffered or incurred by the Agency (including but not limited to all legal costs and expenses on a full indemnity basis) arising out of or in connection with:

- 13.1.1 any breach by the client of these terms and conditions, including but not limited to, any breach by the client of Section 6 of these terms and conditions;
- 13.1.2 any claim brought by a third party against the Agency in circumstances where, as a result of the client's acts or omissions, the distribution of images, in whatever form, outside of the agreed territory and in breach of these terms and conditions has caused the Agency to be in breach of the terms of an exclusive agreement with such third party; and
- 13.1.3 any breach by the client of any applicable laws and regulations including but not limited to any breach of applicable health and safety or employment laws and regulations as amended from time to time.

## **14. Fashion Shows**

Catwalk bookings provide the client with the right to make use of a model's services on the catwalk for the specified show and the right to allow photographers to be present to take photographs and videos of the show on the basis that all such material (or reproductions etc. as set out in section 3b above) is exploited for reporting purposes only. The client is responsible for ensuring that all

photographers present are aware of this condition and the client will procure that they abide by these conditions. If any other usage is required it must be negotiated and agreed with the Agency at the time of the booking.

### **15. Music videos, Promotional Films**

All fees will be negotiated, structured and paid by the client for on a case by case basis. In normal circumstances there will be a fee for the shoot plus an additional buyout fee payable by the client. If not booking direct, the client (usually the music company) will be invoiced by the Agency as the ultimate client (see section 5).

### **16. Test and Experimental Photography**

When the Agency agrees to allow a photographer to take test or experimental photography the photographer is not entitled to use, or allow others to use, test and/or experimental photographs or test commercials for commercial purposes unless specific arrangements have been made before the photographic session.

#### 17. Intellectual property rights

17.1 The photographer and/or the client and anyone obtaining rights from or through the photographer/client is not entitled to use any images for any usage beyond that agreed or permitted under sections 2a), 3, 12, 13 and 14 above. The client will procure that the photographer/client agrees to restrict the use and exploitation of the copyright content of the photograph or any other intellectual property rights. If the client is not the photographer, the client is to draw all these terms and conditions (1-23) to the attention of the photographer and procure their agreement to them before the shoot commences.

17.2 All rights not expressly granted to the client under these terms and conditions are hereby reserved to the Agency and/or the model as appropriate. In particular, the client acknowledges and agrees that the Agency is the owner or licence holder of all commercial rights and intellectual property rights relating to the model and the Agency and the client shall not be entitled to exploit or enter into any commercial or other agreement to exploit any rights relating to the model or the Agency other than the rights specifically granted to the client under these terms and conditions.

17.3 For the avoidance of doubt, notwithstanding anything in the booking confirmation form or these terms and conditions, including but not limited to any grant of exclusivity over the use of the images, the client acknowledges and agrees that the Agency and the model may use the images resulting from any booking in any form whatsoever, solely in order for the model and the Agency to promote the model and in the search of future job opportunities for the model. The model and the Agency acknowledge and agree not to exploit the images for commercial purposes, other than as set out in the booking confirmation form and these terms and conditions.

#### 18. Liability and insurance

18.1 No party excludes or limits its liability under these terms and conditions for:

18.1.1 death or personal injury caused by its negligence;

18.1.2 fraudulent misrepresentation; or

18.1.3 any other type of liability which cannot by law be excluded or limited.

18.2 Subject to section 17a, the Agency limits its liability under these terms and conditions, whether such liability arises in contract, tort (including without limitation negligence) or otherwise, so that the maximum liability of the Agency for all claims under these terms and conditions shall be limited to and shall not in aggregate exceed the total amount of the fees paid or payable to the Agency;

18.2.1 the Agency shall not be liable for:

18.2.1.1 loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings;

18.2.1.2 product recall costs;

18.2.1.3 failure by the model to attend a booking for whatever reason;

18.2.1.4 damage to the client's reputation; or

18.2.1.5 consequential, special or indirect loss or damage, even if the Agency has been advised of

the possibility of such loss or damage.

18.3 The client shall effect and maintain (and shall require its ultimate client, if any, to maintain) throughout the continuance of this terms and condition insurance policies which provide appropriate coverage adequate enough to cover all liabilities and risks of the client that may arise under these terms and conditions. Such insurance policies shall include without limitation:

18.3.1 cancellation insurance to protect against the potential liabilities which the Agency and the client may incur as a consequence of the provisions of sections 8 and 9;

18.3.2 insurance to protect the model and the Agency should any damage, injury or loss be caused whilst the model is providing services to the client; and

18.3.3 travel insurance to cover the activities of the models whilst travelling to and from the location of the services.

## **19. Contract and authority**

All matters relating to the use of the model's image, any other services supplied by the model and all fees must be negotiated and agreed only with the Agency. The client shall not attempt to negotiate, nor allow others to negotiate, with the models directly. If the client or the photographer or any other person on their behalf or connected with them obtains the model's signature on any document or the model's purported verbal agreement to anything, that is not binding on the model or the Agency unless and until it is agreed in writing by the Agency (such agreement to be determined in the Agency's absolute discretion).

## **20. Complaints and disclaimer**

Any cause for complaint must be reported to the Agency by the client as soon as it arises. Complaints cannot be considered and/or dealt with effectively after the services have been delivered. Whilst the Agency will use reasonable endeavours to ensure that the models provide a satisfactory and efficient service to clients, as the agent, the Agency cannot be held responsible for a model's conduct or behaviour whilst delivering the services and in this regard the Agency shall not be held liable for any costs, expenses or losses suffered as a consequence of the behaviour or conduct of any model.

## **21. Force Majeure**

The Agency's shall not be liable to the client for any delay in performing or failure to perform any of its obligations under these terms and conditions which is due to any cause beyond its control and which is unknown to, and cannot reasonably be anticipated by the Agency including without limitation fire, flood or catastrophe, acts of God, insurrection, workforce action, war or riots, (an "Event of Force Majeure") and the Agency's obligations under these terms and conditions shall be suspended for so long as the Event of Force Majeure continues and to the extent that it is so delayed.

## **22. Interpretation of terms and conditions**

22.1 For the purpose of the relationship between the client and the Agency the client acknowledges, accepts and agrees that the Agency is the supplier of services which shall be strictly and exclusively governed by these terms and conditions. These terms and conditions apply to every offer, quotation, acceptance, purchase order, confirmation order, specification and/or contract for the sale and supply of services or goods (including services ancillary thereto) by the Agency and supersede any other terms of the client and take precedence over and override and exclude any other terms stipulated or incorporated or referred to by the client whether in the booking confirmation form or in any negotiations and any course of dealing established between the Agency and the client. The client acknowledges that there are no representations, statements or promises made or given by or on behalf of the Agency outside these terms and conditions which have induced the client to enter into these terms and conditions (which expression shall include any contract of which these terms and conditions form part).

22.2 If there is any conflict between any of these terms and conditions and the booking confirmation form then the terms of these terms and conditions shall prevail without detriment to the remaining unaffected terms of booking confirmation form.

22.3 The booking confirmation forms part of these terms and conditions and shall have effect as if set out in full in the body of these terms and conditions. Any reference to these terms and conditions includes the booking confirmation form.

22.4 For the purpose of these terms and conditions the words “agreed”, subject to section 1, means agreed in writing in the booking confirmation form and signed by duly authorised representatives of both the Agency and the client.

### **23. General**

23.1 If any of the terms, conditions or provisions of these terms and conditions or the booking confirmation are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent, be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

23.1 Any termination of all or part of these terms and conditions shall not affect the coming into force or the continuance in force of any provision of these terms and conditions which is expressly or by implication intended to come into force or continue in force on or after such termination.

23.2 Except as otherwise expressly provided in these terms and conditions, all representations, warranties, undertakings, agreements, covenants, indemnities and obligations made or given or entered into by the client and the ultimate client under these terms and conditions are assumed by them jointly and severally.

23.3 Nothing in these terms and conditions shall render any party a partner or agent of the other. Except as expressly permitted by these terms and conditions, nothing shall allow a party to purport to undertake any obligation on behalf of the other nor expose the other party to any liability nor pledge or purport to pledge the other’s credit.

23.4 Nothing in these terms and conditions shall render any party a partner or agent of the other. Except as expressly permitted by these terms and conditions, nothing shall allow a party to purport to undertake any obligation on behalf of the other nor expose the other party to any liability nor pledge or purport to pledge the other’s credit.

23.5 No failure to exercise and no delay in exercising on the part of either party of any right, power or privileged under these terms and conditions shall operate as a waiver of it. Nor shall any single or partial exercise of any right, power or privilege preclude the enforcement of any other right, power or privilege. Nor shall the waiver of any breach of a provision be taken or held to be a waiver of the provision itself. For a waiver to be effective it must be made in writing.

23.6 Except as and to the extent expressly otherwise specified in these terms and conditions, the rights and remedies contained in these terms and conditions are cumulative and are not exclusive of any rights or remedies provided by law or elsewhere in these terms and conditions.

23.6.1 The parties agree to keep, and to instruct its agents, employees, advisers and sub-contractors with knowledge hereof to keep these terms and conditions strictly private and confidential and not to disclose any details relating to the same, subject to disclosure in the following circumstances;

23.6.1.1 to enable enforcement of the party’s rights under these terms and conditions;

23.6.1.2 with the prior written consent of the other party; and

23.6.1.3 as required by any applicable law.

23.7 These terms and conditions and the booking form constitute the entire agreement between the parties and supersede any previous agreement or arrangement between the parties relating to the subject matter of these terms and conditions.

23.8 No variation or amendment to the terms of these terms and conditions shall be valid and binding unless in writing and signed by an authorised representative of each party.

23.9 Except where these terms and conditions expressly provides otherwise, a person who is not a party to these terms and conditions has no right under the Contracts (Rights of Third Parties) Act



1999 to enforce any term of these terms and conditions but this does not affect any right or remedy of a third party which exists or is available apart from under that Act. The client acknowledges, accepts and agrees that the Agency has entered into these terms and conditions for the benefit of itself and the model and accordingly the model shall be entitled to enforce these terms and conditions as if he/she were a party to these terms and conditions.

23.10 Subject to clause 23.11, the parties agree that these terms and conditions and its provisions will be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

23.11 Notwithstanding clause 23.10, the Parties to this Agreement agree that the Company may enforce its rights under these terms and conditions in any other court of competent jurisdictions outside of the courts of England and Wales.

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