

# Terms and Conditions

## Client Agreement – Photographic Services



These terms and conditions (“Client Agreement”) are a legal agreement between you and Over the Top Imagery.

This Client Agreement sets out yours and our rights and obligations relating to our photographic services and the use of our online web publishing service for access to our public and private client imagery.

You should read this Client Agreement carefully and in full before accepting any services provided by Over the Top Imagery. By reading the agreement or continuing to use the online site, you agree to be bound by this Client Agreement and each time you use the Over the Top Imagery online service you confirm your agreement to the then current terms and conditions.

### 1) General

- Registration:
  - Over the Top Imagery is registered in Australia, ABN 64327232072 and is licenced under CASA (ReOC0786) to conduct Aerial Operations.
- Indemnity:
  - You shall indemnify and keep us indemnified against all costs, claims, damages, losses and expenses arising as a result of any claim or action that the Content and/or your Marks infringe Intellectual Property Rights belonging to a third party. We shall:
    - promptly notify you in writing of any such claim or action;
    - make no admissions or settlements without your prior written consent; and
    - give you all the information and assistance that you may reasonably require to defend against any such claim or action (provided you reimburse our costs of doing so).
  - You agree to indemnify Over the Top Imagery against all claims, demands, damages, costs, penalties, expenses (including reasonable legal expenses) and liabilities made by any third party that may arise from:
    - any breach of this User Agreement by you (including any matter relating to your Over the Top Imagery account);
    - any wilful, unlawful or negligent act or omission by you;
    - the publication of any information (including an advertisement) supplied by you;
    - the sale or offering for sale of any Item; or
    - Your violation of the rights of any third party.
- Events outside our control:
  - We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a contract that is caused by events outside our reasonable control (Force Majeure Event).
  - A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:
    - Strikes, lock-outs or other industrial action.
    - Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.
    - Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster.

- Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
- Impossibility of the use of public or private telecommunications networks.
- The acts, decrees, legislation, regulations or restrictions of any government.
- Our performance under any contract is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the contract may be performed despite the Force Majeure Event.
- Communication:
  - Sometimes applicable laws require that some of the information or communications we send to you should be in writing. When using our site, you accept that communication with us will be mainly electronic.
  - We will generally contact you by e-mail. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights. All communications between you and us must be in English.
- Transfer of rights and obligations:
  - The User Agreement between you and us is binding on you and us and on our respective successors and assigns.
  - You may not transfer, assign, charge or otherwise dispose of a User Agreement with us, or any of your rights or obligations arising under it, without our prior written consent.
  - We may transfer, assign, charge, sub-contract or otherwise dispose of a User Agreement with you, or any of our rights or obligations arising under it, at any time during the term of the User Agreement.
- Waiver:
  - If we fail, at any time during the term of a contract, to insist upon strict performance of any of your obligations under the contract or any of these terms and conditions, or if we fail to exercise any of the rights or remedies to which we are entitled under the contract, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.
  - A waiver by us of any default shall not constitute a waiver of any subsequent default.
  - No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.
- Variation:
  - If any of these terms and conditions or any provisions of a contract 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.
  - We have the absolute and sole discretion to modify or amend this User Agreement and the Transaction Rules from time to time and such modifications and amendments will be binding upon you once displayed on the Site. You should regularly check the terms and conditions of the User Agreement.
  - If you do not wish to be governed by an amended version of this User Agreement or the Transaction Rules you must cease to use the Over the Top Imagery.
- Agreement:

- These terms and conditions and any document expressly referred to in them represent the entire agreement between us in relation to the subject matter of any contract and supersede any prior agreement, understanding or arrangement between us, whether oral or in writing. To the maximum extent permitted by law, all other terms whether express or implied are excluded.
- We each acknowledge that, in entering into the User Agreement, neither of us has relied on any representation, undertaking or promise given by the other and nothing may be implied from anything said or written in negotiations between us prior to the User Agreement except as expressly stated in these terms and conditions.
- Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date of any contract (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.
- This User Agreement will be governed and construed the laws of the State of Queensland and you irrevocably submit to the exclusive jurisdiction of the Courts of that State.
- In this Agreement where the context permits a reference to "you" includes any one acting on your behalf or with your express or implied authority.

## 2) Online Web Service

- Service availability:
  - Our website is generally intended for use by residents of Australia ("Serviced Territory"). However we do accept Assignments from clients outside the Serviced Territory.
- Service unavailability:
  - We reserve the right to withdraw or amend the Over the Top Imagery web service we provide without notice.
  - We do not guarantee uninterrupted, continuous or secure access to the Over the Top Imagery Service.
  - You acknowledge that there may be times when the Over the Top Imagery Service becomes unavailable, whether on a scheduled or unscheduled basis.
  - We will not be liable to you or any third party if for any reason our site is unavailable at any time or for any period.
- Misuse:
  - We will use reasonable skill and care in making the Over the Top Imagery Service available to you.
  - Over the Top Imagery Service is provided without any warranties or guarantees. In particular, we do not warrant that the Over the Top Imagery Service, our site or any of its contents is virus free.
  - You must take your own precautions in this respect as we accept no responsibility for any infection by virus or other contamination or by anything that has destructive properties.
  - Although we will do our best to provide constant, uninterrupted access to the Over the Top Imagery Service, we cannot guarantee this. We accept no responsibility or liability for any interruption or delay.
  - We accept no liability for any loss of income or revenue, loss of business, loss of profits or contracts, loss of anticipated savings, loss of data, waste of management or office time or for any indirect or consequential loss or damage of any kind however arising out of or in connection with this User Agreement. and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable.
- Personal Data:

- We will gather, use and disclose personal, contact and payment data you have registered with us in accordance with our Privacy Policy. Any and all data (such as name, address and e-mail address) collected through any user registration process or otherwise shall be owned by us.
- Over the Top Imagery will if required provide information and imagery under legal request by the Queensland or Australian federal police.
- Refund Policy:
  - Image purchases are non-refundable. If you are dissatisfied with the website you are free to discontinue using the website, and any payments you have made to OvertheTop Imagery are not subject to refunds.
  - In the case of an event not specifically covered in this agreement, refunds will be given at the discretion of Over The Top Imagery.

### **3) Regulations:**

- All flights conducted by Over the Top Imagery will be in strict accordance with current CASA (Civil Aviation Safety Regulator) regulatory and policy guidance and our own comprehensive Operational and Safety Procedures.
- We require an unobstructed area from which to conduct our flights as we need to maintain an appropriate distance from people and property. We are obliged by CASA to conduct risk assessments for all assignments to mitigate risks to aircraft, people or property.
- All flights will be conducted in suitable weather and with regard to all local.
- Over The Top Imagery is licensed under CASA to conduct Remotely Piloted Aerial Operations and are fully insured.

### **4) Client Brief**

- The Client will provide Over the Top Imagery with a complete and accurate 'Brief' which will accurately detail the Assignment (Services and Deliverables) required, as well as any other information describing any key points of interest and specific requirements no later than seven days prior to the Scheduled Date.
- The Client will provide Over the Top Imagery with information regarding site access and property position as well as any site orientation and procedures relevant to the Services and Deliverables prior to the Scheduled Date.
- Any failure to provide accurate and complete information affecting the delivery of Services by Over the Top Imagery may result in a charge being made by Over the Top Imagery to cover time, associated travel costs and any other costs reasonably incurred by Over the Top Imagery.
- The Client acknowledges Over the Top Imagery may require changes to the Brief where these are necessary to enable Over the Top Imagery to provide the Services in accordance with the terms of its Operator's Certificate issued by CASA and in accordance with relevant Federal, State and Local laws. The Client agrees to accommodate these changes.

### **5) Flight Authorisation**

- Over The Top Imagery will prepare and submit a Flight Authorisation (Area Approval, Permission or Exemption) application to CASA, Air Services Australia and/or Defence (if required) for an agreed Fee within an agreed timeframe. The approval timeframes may affect delivery timeframes for the Assignment. The Client must allow sufficient lead time for the approval process and cannot hold Over the Top Imagery responsible any delay caused by this process.
- Access Permission:
  - The Client is responsible for obtaining any other approvals / permissions to enable Over the Top Imagery to provide the Services and Deliverables under this Agreement. This includes but is not

limited to providing Over the Top Imagery with additional information regarding neighbouring properties and peoples to ensure we meet our privacy and safety obligations.

- Over The Top Imagery is granted permission to enter onto, and fly over, the subject property or activity and shall remain free from liability for personal or property damage provided due caution is exercised and reasonable safety procedures are followed.

## **6) Safety**

- The Client must provide and maintain, as far as is practicable, an environment for Over the Top Imagery crew and other people involved in the Assignment that is safe and without risks to property and health.

## **7) Intellectual Property / Licencing of Images**

- Over the Top Imagery acknowledges that the Client owns all right, title and interest in the imagery captured for an assignment and that Over the Top Imagery has no right to use any of them outside the express terms of this Agreement.
- Over the Top Imagery reserves the right to make reproductions of images created during this Assignment for marketing, promotional and editorial purposes and may use them on and off the Over the Top Imagery website for these purposes.
- We have no obligation to you, and undertake no responsibility, to review the Content to determine whether any such Content may result in any liability to any third party or any breach of any law.
- Notwithstanding anything to the contrary contained in this Client Agreement, if we reasonably believe that any Content may create liability for us, we may remove such Content as we believe, in our sole discretion, is prudent or necessary to minimise or eliminate our potential liability.
- We retain all Intellectual Property Rights on our website site, and nothing in this contract shall be taken to grant any rights to you in respect of such Intellectual Property Rights.
- Title to and ownership of all Intellectual Property Rights embodied by or otherwise incorporated into the Content shall remain with you. Except as expressly provided in this agreement, nothing shall be construed to grant to us any right, title or interest in or to the Content.

## **8) “Model” Rights**

- The Client warrants that they have obtained all Model Rights where required to enable Over the Top Imagery to carry out the Assignment and agrees to indemnify Over The Top Imagery against any cost or claim by any person arising out of photography of any person or thing at the Location and / or Event.

## **9) Scheduling**

- Over the Top Imagery undertakes to conduct the Services on the specified date and at the time outlined in the Particulars.
- Uncontrollable Events:
  - Neither party shall be liable for any failure or delay in performance of this Agreement which is caused by circumstances beyond his reasonable control.
  - If any uncontrollable event delays or prevents the performance of the obligations of either party for a continuous period of more than one month, the other party may give notice to terminate this agreement. The notice must specify a date (at least seven days ahead), when the termination will take effect. A termination notice is irrevocable unless both parties agree to re-instate this agreement.
  - If the agreement is terminated, all money due from one party to the other becomes due immediately.

- The party claiming the uncontrollable event will take all necessary steps to perform this agreement despite the uncontrollable event.
- Weather Conditions:
  - The Client acknowledges that Over the Top Imagery may be unable to provide the Services in certain weather conditions.
  - Over the Top Imagery cannot provide the Services on the Scheduled Date if the Pilot deems that it is unsafe to fly due to prevailing weather conditions or if the Client directs Over the Top Imagery that the weather conditions are not suitable for achieving the Deliverables.
  - Over the Top Imagery will arrange to provide the Services as soon as practicable after the agreed Scheduled Date where possible. The Client will be liable for any costs incurred by Over the Top Imagery as a result of such re-scheduling.
  - Where it is not possible to re-schedule the Services due to the Client's requirements, Cancellation Rates will apply.
  - Over The Top Imagery is not responsible for delay or failure to provide the Services due to the prevailing weather conditions and cannot be held liable where this results in loss or damage to the Client.
  - Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such
    - delay or failure is due to force majeure. If a delay or failure is anticipated due to force majeure, the performance of a party's obligations will be suspended.

## **10) Fees and Payment**

- The total price payable includes:
  - The Price for Services and Deliverables as set out in the Particulars
  - Fees associated with Flight Authorisation (if applicable)
  - All extra costs that are incurred, including but not limited to, travel, accommodation, meals etc. in addition to all other reasonable and customary costs
- All quoted fees are exclusive of GST.
- The Deposit and Balance are payable as outlined below unless otherwise outlined in the Particulars.
  - Deposit:
    - One half (50%) of the agreed price is payable in advance on signature of this Agreement.
    - The above mentioned deposit is non-refundable if the Client / Representative does not arrive as agreed or changes the Scheduled Date and / or Time without due Notice. If Over the Top Imagery does not arrive at the agreed Location and Time specified in the Particulars (unless otherwise agreed and the Client has been advised of a delay), the deposit shall be refunded in full to the Client.
  - Balance of Payment:
    - The remaining half (50%) is due no more than 14 days after services. Deliverables will be withheld until all monies are paid in full.
    - All other amounts due to Over the Top Imagery under this agreement plus GST will be payable on invoice presentation unless otherwise agreed.

## **11) Cancellation and Termination**

- The Client may cancel the Services prior to the Scheduled Date at any time by giving written notice to Over the Top Imagery. The Client agrees to provide Over the Top Imagery with as much notice as reasonably practicable.

- Where the Client cancels the Services, the Client will be liable for the following Penalties to be paid in full on presentation of Over the Top Imagery invoice:
  - within 1 - 2 business days of the Scheduled Date – 100% of agreed price plus GST within 3 - 4 business days of the Scheduled Date – 50% of agreed price plus GST
  - within 5 or more business days prior to the Scheduled Date – 25% of agreed price plus GST.

## **12) Limitation of Liability**

- All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warranty or term cannot be excluded, then this sub paragraph will be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.
- Over The Top Imagery shall not be liable to the Client for any loss or expense which is:
  - indirect or consequential loss; or
  - economic loss or other loss of turnover, profits, business or goodwill; or
  - loss of amenity represented by the Client having no visual record of a Location or an Event; or
  - loss or damage suffered by the Client as a result of an action brought by a third party.
- Except in the case of death or personal injury, the total liability of Over the Top Imagery under this agreement, however it arises, shall not exceed the Price presented in the Particulars. This applies whether an action is based on contract, tort or any other basis in law.
- This paragraph (and any other paragraph which excludes or restricts the liability of Over the Top Imagery applies to Over the Top Imagery employees, subcontractors and agents as well as to the Remote Pilot.

## **13) Public Liability Insurance**

- Over The Top Imagery holds public liability insurance (\$20 million) which covers all aspects of the Services. A copy of this insurance policy is available to inspect by the Client upon request.

## **14) Warranties**

- Over The Top Imagery warrants that it works under a valid CASA Operation's Certificate authorising the use of remotely piloted aircraft required to carry out the Services under this Agreement. Its Remote Pilots are certified and authorised to operate this equipment under Over the Top Imagery Operator's Certificate.