

IMAGE SALE AND LICENCE AGREEMENT

This agreement sets out the terms and conditions to which you must agree before entering or using the Website. By proceeding to use the Website, you agree to be bound by these terms and conditions.

1 Parties

1.1 The parties to this agreement are:

- Archer Group Pty Ltd trading as Winning Sports Photography (**Winning**); and
- you, and if you enter or use this Website as agent for another or in the course of your employment, your principal and/or employer as the case may be (**You**).

2 Intellectual property

General

- 2.1 Winning owns all Intellectual Property in any Image displayed on this Website.
- 2.2 Nothing in this Website or this agreement operates as an assignment of any Intellectual Property, the Website, or any part of it, to you, or entitles you to deal with Intellectual Property in any manner except as explicitly permitted by this agreement.
- 2.3 Nothing in this Website or this agreement operates as a licence to Use any Image for anything but private, non-commercial purposes. For the purposes of this agreement, and without limitation, any use of a Licensed Image in the course of which you receive payment for or in relation to the use of that Licensed Image is deemed a commercial use.
- 2.4 Nothing in this Website or this agreement gives You any right to grant sub-licenses to third parties to Use Images or any other Intellectual Property.

Print licences

- 2.5 If you purchase a Print from Winning, you may not reproduce, scan, lend for commercial purposes, or auction that Print without first obtaining Winning's express consent.

Electronic licences

- 2.6 Upon payment of an Image Fee, Winning grants you a non-exclusive licence to print, and reproduce any **Licensed Images** for private, non-commercial purposes only.

3 Access to Website

- 3.1 Winning grants you a licence to access and to use the Website and examine any Images displayed on the Website to which your

Password gives you access, or which are accessible without the use of a Password, as may be necessary to enable You to purchase a Print or Licensed Image.

3.2 You undertake to keep any Password that you may receive confidential from anyone to whom the same Password could not have been legitimately given. You undertake that if you suspect that you have been given a Password that you should not have received (whether by accident, confusion, or for any other reason) you will immediately:

3.2.1 cease to access the Website (except for the purposes of this clause);

3.2.2 contact Winning and inform it of the Password and the circumstances in which You were given it; and

3.2.3 comply promptly with any reasonable direction Winning may give You in order to resolve the problem.

4 Print sales

4.1 You agree to pay the Price for any Prints you may order from Winning, by such means as Winning may specify.

4.2 In consideration for your agreement to pay the Price, Winning undertakes to:

4.2.1 produce Prints of the Images You specify in your order, in the quantity you order and of the size specified in the Price List that you order;

4.2.2 post such Prints to You by ordinary surface mail (or by express post if specifically requested at the time You place Your order).

4.3 Nothing in this agreement obliges Winning to produce any Prints or post any Prints to you until Winning has received your payment for those Prints in cleared funds.

5 Electronic image sales

5.1 On payment of an Image Fee, Winning will provide you with electronic copies of the Images from the Website to which your Image Fee relates. Such electronic copies will be provided either by e-mail or on CD-ROM, in accordance with your preference as stated in your order.

5.2 Nothing in this agreement obliges Winning to provide You with any Licensed Image until it is satisfied that it has received your payment for those Licensed Images in cleared funds.

6 Warranties and acknowledgements

General warranties

6.1 Each party warrants that:

6.1.1 it has authority to enter into and to perform its obligations under this agreement;

6.1.2 it has the ability to perform its obligations under this agreement;

6.1.3 it is authorised by all necessary government and other agencies and authorities to perform its obligations under this agreement and will continue to be authorised to perform this agreement.

Your acknowledgements and warranties

6.2 You acknowledge that Winning has no notice of or information about:

6.2.1 the nature or quality of the equipment with which You intend to download, print, and reproduce Licensed Images; or

6.2.2 the uses to which you intent to put Licensed Images.

6.3 You acknowledge that the sizes for Prints stated in the Price List are approximate only.

6.4 You may not, and warrant and represent that you will not, use the Website, or any Print or Licensed Image:

6.4.1 for any purpose that is unlawful or prohibited by this agreement or any notice appearing in the Website;

6.4.2 without limitation to clause 6.4.1 of this agreement, in order to defame, abuse, harass, stalk, threaten, or otherwise offend any person, or to denigrate any group of people, or in any manner that is offensive to the general public.

No Winning warranties

6.5 Winning makes no warranties in relation to the Website, or the goods or services it offers by means of the Website, or any related matter. Without limiting the foregoing, Winning does not make any warranties:

6.5.1 that any Image will be complete, accurate, or timely;

6.5.2 as to the quality of any Licensed Image once You have printed or reproduced it;

6.5.3 as to the appropriateness or suitability of any Licenced Image or Print for any given purpose;

- 6.5.4 that Your access to the Website will be uninterrupted or error-free;
- 6.5.5 that the Website and the Images will be free from viruses and will not cause any software or equipment failure;
- 6.5.6 in relation to the quality, accuracy, or truthfulness of the content of the Website;
- 6.5.7 that the content of the website (including but not limited to the Images) does not infringe any Intellectual Property rights;
- 6.5.8 in relation to any website linked to the Website;
- 6.5.9 in relation to the security of any Password.

Liability and risk

- 6.6 You use this Website and order Prints or Licensed Images at your own risk.
- 6.7 Winning will not be held liable for any damage incurred by Prints in transit between Winning and You.
- 6.8 Winning has not made any warranties regarding Images, Licenced Images, or Prints. All such warranties, including warranties of merchantability or fitness for a particular purpose are excluded. To the extent lawful Winning has no liability under this agreement. Where liability cannot be excluded it is limited (unless clauses 6.9 and 6.10 of this agreement apply), at Winning's option, to resupplying the Prints or Licensed Images or paying You the costs of such resupply.
- 6.9 Where Winning has printed, framed, or used an Image other than that which you have ordered, Winning will:
 - 6.9.1 pay the reasonable costs of having the goods in question returned to Winning's premises; and
 - 6.9.2 provide You with a correct Print or Licensed Image at Winning's expense.
- 6.10 Where You believe that a Print or Licensed Image supplied under this agreement is substandard due to manufacturing or material flaws, or has undesirable characteristics that were not detectable in the Image as displayed on the Website (for example, is badly out of focus, or is over or under exposed to a degree that detracts from the image), you may return the Print or Licensed Image to Winning at your own expense. If Winning agrees, in its complete discretion, that your claim has merit, Winning will offer an exchange for another item of equal or greater value and refund the postage costs (if any) that you originally paid. If no

appropriate exchange item can be found, Winning will make a complete refund of Your original purchase price and postage costs (if any).

7 Prices and payment terms

7.1 All prices cited by Winning in or in relating to this Website or the goods and services offered by means of this Website are in Australian dollars.

7.2 You may pay any Price or Image Fee to Winning by cash, direct deposit to Winning's bank account, or by credit card. Winning will not accept any other form of payment.

8 Termination

8.1 Winning may terminate its agreement with you at any time immediately without giving notice to you. Termination pursuant to this clause will not affect any rights You may have accrued prior to the date of termination.

8.2 This agreement will terminate automatically if You breach clause 6.4.

9 Indemnity

9.1 You agree to indemnify Winning against any loss, damage, or liability (including liability for legal costs and expenses) that it may suffer by reason of your breach of clauses 3.2 and 6.4 of this agreement, or by reason of any such breach that you have authorised or in which you have participated.

10 Miscellaneous

Assignment

10.1 You may not assign any of your rights under this agreement without Winning's prior written consent. That consent may be given or withheld at Winning's absolute discretion. Winning may assign its rights and obligations under this agreement at its own discretion.

Other documents

10.2 The Price List displayed from time to time on the Website forms part of this agreement.

Entire agreement

10.3 This agreement contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, save as permitted by law.

Further acts

10.4 The parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this agreement.

Governing law and jurisdiction

10.5 This document is governed by the law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

No agency or partnership

10.6 No party is an agent, representative, or partner of any other party by virtue of this document.

No authority to act

10.7 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this document or by express agreement between the parties.

Severability

10.8 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

Variation

10.9 No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

Waiver

10.10 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

Definitions and interpretation

Definitions

10.11 In this agreement the following definitions apply:

Image Fee means the fee You must pay to Winning pursuant to this agreement and as specified in the Price List as the purchase price for an electronic copy of an Image, to be delivered on CD-ROM or by e-mail.

Image means any picture or photograph displayed on this Website.

Intellectual Property includes all forms of intangible property rights mentioned in Part II of the *Agreement on Trade Related Aspects of Intellectual Property Rights*, and includes (without limitation) copyrightS, trade marks (registered or unregistered), design rights (whether registered or unregistered), confidential information and trade secrets

Licensed Image means any Image in respect of which you have paid a Image Fee.

Password means the security codes supplied by Winning to its customers and potential customers in order to restrict access to Images.

Price means the fee You must pay to Winning pursuant to this agreement and as specified in the Price List as the purchase price for a Print.

Price List means the price list displayed from time to time on this Website.

Print means an Image printed by Winning onto photographic paper or other hard medium.

to **Use** includes reproduction, publication, communication to the public, adaptation, or dissemination.

Website means the website maintained by Winning for the purpose of selling Prints and Licensed Images

Interpretation

10.12 In this agreement, unless the context otherwise requires:

10.12.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

- 10.12.2 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 10.12.3 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document unless otherwise stated;
- 10.12.4 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- 10.12.5 a reference to a business day means a day on which all banks are open for business generally in ;
- 10.12.6 the day on which any act, matter or thing is to be done under this document is not a business day, that act, matter or thing may be done on the next business day; and

a covenant or agreement on the part of two or more persons binds them jointly and severally.