

# Send It Media Terms and Conditions

## 1. Definitions

In these conditions the following words shall have the following meaning:-

“Send It Media”, “SIM”, “Company”, “Us”, “We”, “Our”, or variations thereof shall mean Ben Daigneault trading as Send It Media.

“The Customer”, “You”, “Your”, “Client”, or variations thereof shall mean the person, firm or Company with whom Send It Media contracts.

“Goods” means the articles or things or service which are the subject matter of the Contract.

## 2. Order Acceptance Policy

2.1. SIM reserves the right at any time to accept or refuse service and sales for any reason. SIM reserves the right to require additional verifications or information from the purchaser before accepting any order or providing services. You agree that the receipt by SIM of an electronic or printed copy of an order form does not indicate SIM's acceptance of the purchaser's order, neither does it constitute confirmation of SIM's offer to sell.

2.2. You acknowledge and agree that title and ownership of all ordered products shall remain with SIM until the full purchase price for the same has been satisfied to SIM unless previously agreed to be release earlier by SIM.

## 3. Quotations

3.1. Written quotations are valid for up to 30 days (unless agreed otherwise) and will be supplied for all work on receipt of a clear and accurate written brief from the Client. Written briefs are required to ensure photographic objectives are well defined for both the Client and SIM and to avoid errors. The brief may need to include, but is not limited to, full postal address with postcode, maps, site plans with boundaries and the North compass bearing clearly marked, Ordnance Survey Grid references (6-figure) and any other material required to accurately identify the site from the air.

3.2. The quotation and fee will be inclusive of all preparatory work, provision of any written documentation (e.g. Method Statements and Risk Assessment where required) or permission required (e.g. by the Civil Aviation Authority, Air Traffic Control, Police and relevant landowners), travel and accommodation (where necessary) and post-production processing work (not normally included) and digital delivery of images. For UAS work, unless otherwise stated, the quotation will be for the amount of aerial/ground photography or video capture reasonably achievable within one day.

3.3. The fee quoted will reflect the proposed uses of the images and video clips, as stated by the Client, for which Full Personal Reproduction Rights will be granted. A series of assignments is treated as a set of individual contracts. Additional Reproduction Rights may be negotiated at a future date.

## 4. Payment Terms

4.1 Terms of payment are within SIM's sole discretion, and, unless otherwise agreed to in writing by SIM, 50% payment is due in full before the first day of shooting. In the case of work being required by the Client to be done in phases, SIM reserves the right to partially invoice at stages and request an initial deposit prior to the commencement of any work due to be undertaken. SIM reserves the right to add statutory late payment interest (Base Rate + 8%) to overdue accounts [Late Payment of Commercial Debts (Interest) Act 1998]. (see 4.6)

4.2 The Client shall pay SIM, the fees and other amounts as outlined and agreed in the quotation. Any additional work requested that has not been previously agreed upon or that has not been included in the initial quotation, will be charged for on a 'time and hire' basis calculated on the basis of SIM's standard rates (standard rate for half day/short task at £250 or standard rate for 1 (one) full day/full day task at £500 + any other reasonable expenses).

4.3 SIM reserves the right to amend any quotation prior to both parties being in agreement or based on any new information which comes to light from either a site survey or prevailing weather conditions or consent of any location owners, or requirements for additional equipment and/or time and/or operatives to ensure the safe and professional operation of the services.

4.4 SIM's pricing is based on hire and service charges being calculated on task circumstances, location, actions required, equipment and operators needed (pilots, observers, assistants). All hire, service, and other charges will be calculated on this basis, unless previously agreed in writing.

4.5 Upon SIM being satisfied that the services have been completed in full or in stages (or in advance of this at SIM's option), SIM will issue an invoice, or invoices, to the Client for the fees and charges then due. The Client will make payment for all sums due under an invoice in full, and in cleared funds, in the method set out on the invoice, within 14 days from the date the relevant invoice is raised (unless SIM and Client agree in writing on an alternative time frame).

4.6 Unless previously agreed, any amount due to SIM that is outstanding after the due date for payment will attract interest at the rate of 8% per month above the base rate of The Bank of England until the full amount has been paid. Such interest charges will be compounded at the end of each month.

4.7 SIM may deduct the amount of deposit (if any has been paid to SIM) specified in the service agreement from the final invoice(s) to the extent that such deposit remains unused.

4.8 If at any time the Client no longer wishes to receive the services (or any part of the services) SIM reserves the right to charge a cancellation fee not exceeding the total amount that would have been paid to SIM under the service agreement had the services been completed.

4.9 The Client shall procure that upon request from SIM, the Client's director(s) enter into separate guarantees with SIM whereby they irrevocably and unconditionally guarantee to SIM the due and punctual performance of the Client's obligations under the service agreement. In addition, if the Client defaults in payment of any sum or sums payable to SIM under the agreement for a period of more than 90 days from the invoice date, the director(s) of the Client will upon written request from SIM pay such sum or sums as may be outstanding under the service agreement. In the event of there being more than one signatory to this guarantee, the directors' liabilities shall be construed and have effect as joint and several liabilities.

## **5. Site**

5.1. If a site survey is needed prior to the quotation, the cost will be agreed and invoiced in advance (unless agreed otherwise). The Client must confirm in writing that it has permission to access the ground that will be used to take off and land. If a Client cancels our services after accepting a written quotation, the risk assessment fee will be still be valid and chargeable to the Client due to work that has to be undertaken prior to any flights or filming/photography being performed by SIM on behalf of the Client.

## **6. Cancellation by Send It Media**

6.1 If SIM cannot fly/film due to adverse weather conditions or mechanical failure, SIM cannot fly due to reasons that only become evident once on site or for reasons that SIM was not advised of beforehand then a partial cost will remain due for payment to SIM. SIM will make every reasonable attempt to complete any tasks missed due to any of the reasons highlighted in, within 28 days of the missed task.

## **7. Cancellation by You**

7.1 Notice of cancellation by the Client must be received in writing by SIM and the notice is not valid until confirmed in writing by SIM. Cancellation fees are payable according to the following schedule:

7.1.1 Following payment and 3 (three) or more days' notice – 40% of the agreed fee less any payment already made.

7.1.2 Following payment and 2 (two) days or less notice – 60% of the agreed fee less any payment already made.

7.1.3 Notwithstanding the above schedule, if any costs have been incurred by SIM following written instruction from you (for example, but not limited to an agreed site survey cost, additional operators, specialist equipment) these costs will remain due for payment in full.

## **8. Permission to conduct photography**

8.1 Flight permission checks hereby lie with the customer to check that flight is ultimately permitted in the area they wish to have imagery taken of. SIM will make reasonable checks also, e.g checking authorised drone mapping, gaining advice from the CAA for flight permissions and other airspaces users currently using or planning to use the same airspace.

## **9. Photographic material supplied**

9.1 Still photographic or video material will normally be shot on digital camera equipment and supplied as unedited RAW or low compression jpegs. Video material will normally be supplied as unedited . As a minimum, you will need to put the video through stabilisation software during post-processing to obtain smooth footage. Images will be supplied on either a Memory card, USB or a cloud based data transfer site ie; weTransfer.

9.2 Retouching, digital manipulation and stitching of supplied images or video is available at an additional cost, and should be discussed during the quotation discussions. Whilst we will endeavour to provide an accurate colour rendition of the original scene, we cannot guarantee to match the colour perceived by the human eye. All original photographic material (i.e. negatives, high-resolution digital RAW/tiff files and/or Video) remains the property of SIM. Any post Retouching, digital manipulation and stitching of supplied images or video will be charged to the customer at SIM's discretion.

9.3 Reorders, reprints and enlargements etc. from the original material can be supplied on request. Reorders will be treated as an extension to this contract and should include Image Reference Numbers and are required in writing. A written quotation will then be supplied. Finished materials are normally dispatched within 10 working days of completion of the location work.

## **10. Legal Reproduction Rights, Moral Rights and Copyright (Copyright, Designs and Patents Act 1988) and Property Misdescriptions Act 1991.**

10.1 Limited Reproduction Rights of the commissioned material passes to the Client upon full settlement of the final invoice. This allows reproduction for all uses stated on the quotation or agreed to on negotiations with Us. By default and in the absence of any stated use, this will be 'General Marketing'. 'General Marketing' use excludes use for 'merchandising' (e.g. reproduction of an image for promotion on goods for resale), for which an additional fee will need to be negotiated.

10.2 Unless agreed in advance, use of the images/video by any third party (including, but not limited to, newspapers, magazines, book publishers, television, film and the Internet) will only be granted following written permission from SIM. This will incur a negotiated Reproduction Fee. SIM reserves the right to refuse the use of third party images/video without reason. SIM also reserves the right to use the images/video for it's own use as it sees fit, e.g. for promotional material, advertising etc.

10.3 Subject to Paragraphs 10.1 and 10.2, above, the following two exceptions do not need advance written permission from SIM:-

- i. Anyone working directly for the Client such as an employee or marketing department of the Client's company creating publicity material for the Client incorporating the commissioned material in a General Marketing way.
- ii. Newspaper Editorial Content for a news item about the Client provided that the text "Photograph (C) Send It Media" is clearly visible adjacent to the image for printed content.

10.4 We abide by the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008. We will not alter our images to deliberately mislead the viewer. We remind users of our images that publishing old images (which were taken much earlier when the views were significantly different), without indicating capture date, could be misleading. Both of these activities may be considered as offences under these Regulations.

### **10.5 Licencing**

10.5.1 We grant You an exclusive licence to use the commissioned material as agreed in clause 10.1 for a period of 12 months from the date of delivery of the commissioned material from Us to You or from the date that full payment has been received by Us from You for the commissioned material, whichever is the later.

10.5.2 After the period of the licence as stated in Clause 10.5.1 has expired:

10.5.2.1 We grant You a non-exclusive licence to use the commissioned material in perpetuity and in agreement with Clauses 10.1, 10.2 and 10.3. and

10.5.2.2 You agree that We may use the images/video Ourselves and that We may also licence the images/video to third parties without reference to You.

### **11. Limitation of Liability, weather, Force Majeure, Act of God and Other constraints**

11.1 As with any outdoor location photography, a successful outcome depends upon suitable weather conditions. A decision to photograph on a particular day is normally delayed to the last practical moment to maximise the chance of suitable weather. Should the weather on the day not be as forecast and the assignment needs to be postponed, or there is some other reasonably unpredictable reason why the work could not be completed, then there will be no additional charge to the Client for a return visit to complete the work. No refund will be made for any chargeable preparation work already carried out.

11.2 The UAS and camera weigh approximately 895g. Whilst the UAV has built-in self-stabilising measures, it is a flying platform and is subject to movement by the wind and will tilt whilst being held against the wind. This will impact on the image quality, steadiness and the angle of the picture(s). We will endeavour to obtain the best quality pictures for the conditions and certain adjustments (such as skew to square up the image) can be made afterwards in post-processing. However, the images and video are not guaranteed to be steady and of broadcast standards (for instance).

11.3 If the work could not be completed due to Client reasons (e.g., but not limited to, lack of access or unscheduled site activity etc), the Client may be charged to recover costs and time.

11.4 SIM will always endeavour to complete its assignments by proposed completion dates. However, due to weather and other operational constraints, SIM cannot guarantee completion on or by any specific date. It, therefore, cannot be held responsible for any missed publishing or other deadlines or any consequential costs involving the timing of the commission.

11.5 The completion of work may be subject to alteration or cancellation due to cause or causes beyond Our control. Certain requested shots from specific locations, directions and heights, quoted to be undertaken, may not be possible on the day for various operational reasons. In this case, the best possible alternative shot(s) will be supplied and these will be deemed to fulfil the contract

11.6 Battery limitations mean that each flight will last up to a maximum of approximately 35 minutes. This will normally generate up to 20 minutes of photographically usable flight time. After this time, the UAV must descend for a battery change.

11.7 The quality (e.g. exposure and sharpness) of photographs taken after sunset (which require the camera to be relatively still at the point of exposure) cannot be guaranteed and usually will not be attempted. Images required to be taken into the sun will undoubtedly suffer, to some degree, from lens flare and other detrimental effects.

11.8 In exceptional circumstances, SIM may not be able to completely fulfil or complete a contract at all. In these cases, it will refund part or all of any deposit received and not accept any other liability. In any event, the liability of SIM will be limited to the total value of the contract with no liability accepted for indirect and/or consequential loss.

11.9 SIM does not accept liability for errors resulting from incomplete or inaccurate instructions from the Client's written brief, nor for delays or restrictions caused by Air Traffic Control, CAA or the Police or similar Bodies.

11.10 Whilst back-up copies of images are usually kept, SIM accepts no responsibility nor liability for maintaining archive copies of photographic material after the work has been delivered to and accepted by the Client.

11.11 SIM has all necessary insurances, including Public Liability Insurance, with an indemnity of up to 12 million pounds at request and depending on site rules and regulations.

11.12 SIM does not accept liability for errors resulting from incomplete or inaccurate instructions from the Client's written brief, nor for delays or restrictions caused by Third Parties.

11.13 SIM and its agents shall be under no liability for any injury, loss, or damage of any kind whether direct, consequential or special and howsoever caused resulting from or arising out of or incidental to:

11.13.1 Any negligence on the part of Us (except insofar as the same causes death or personal injury) or

11.13.2 Our performance of or failure to perform or breach of any of its express implied obligations under the Contract.

11.14 You shall indemnify Us against any liability whatsoever (including any liability based on the negligence of You) which it may incur resulting from any claim made against You by any third party.

11.15 We accept no liability for delay or non-fulfilment of any term of the Contract caused wholly or in part by "force majeure", which expression shall be deemed to include war, strikes, lockouts, accidents, fire, scarcity or materials or any other cause or causes not within Our direct control.

## **12. General Conditions**

12.1 No failure or delay on the part of us to exercise its rights under the Contract shall operate as a waiver thereof nor shall any single nor partial exercise of any such right exclude any other or further exercise thereof. Any waiver of a breach of any provision of the Contract shall not affect Our rights in the event of any further or additional breach or breaches.

12.2 Notwithstanding termination of the Contract these Conditions shall continue in full force and effect for so long as is necessary after such termination to give full effect to the provisions contained in these Conditions

12.3 The Contract shall be construed in accordance with English law which shall be the proper law of the Contract and the English Court shall have sole jurisdiction in relation to the provisions contained in these Conditions.

12.4 The clause headings in these Conditions are for convenience only and shall not affect the interpretation hereof in any way whatever

12.5 Each and every obligation contained in the clause or sub-clause of these Conditions shall be treated as a separate obligation and shall be severally enforceable as such and the non-enforceability at any time of the clause or sub-clause of these Conditions shall not prejudice the enforceability of the remainder.

12.7 These Conditions are stipulated by Us on Our own behalf and on behalf of all agents and apply for the protection of all its agents as for Us. The Customer undertakes not to sue or make any claim whatever against any of us or agent of Us in respect of any alleged negligence or other default of that Us or agent in relation to the carrying out, failure to carry out or breach of any Contract.

12.8 The Customer acknowledges and agrees by placing orders with Us that:

12.8.1 This is a transaction into which both parties are freely entering.

12.8.2 There are clauses contained in these Conditions which exclude, limit or modify the liability of Us and Our agents

12.9 All charges are subject to these Terms and Conditions

12.10 The Customer acknowledges that the Customer has read this Agreement and both understands and agrees with Us regarding all of the Terms and Conditions

## **13. Cookies**

13.1. This Website uses Cookies. SIM uses them to track visitors – for example to see where visitors come from and therefore see which Marketing Campaigns are most effective. Third parties also use them on this website . They are innocuous (on this website, certainly) text files. Unless you have switched them off in your Browser, you will have hundreds from all the other the websites that you visit. This latest bit of Legislation says that Send It Media has to ask each visitor whether you wish to accept cookies, thus generating an annoying pop-up until you tick something. Our policy is more simple:

13.2 We use cookies in various ways. If this makes you uncomfortable, then switch them off in your Browser (Google 'switching off cookies') or leave the website. We'd rather you didn't, but equally we don't want to annoy you with pop-ups. If you're comfortable with the use of Cookies whilst you are here, please continue and enjoy the website. Nothing's changed except for another EU Directive created to comply with.