

Shayne Jeffares Photographer Ltd

Standard Photographic Terms & Conditions of Engagement

1. INSTRUCTIONS MUST BE IN WRITING

The Client must ensure that all instructions and expectations regarding the Booking/Order (and any subsequent variations) are agreed in writing.

2. OWNERSHIP

The Photographer grants the Client an exclusive Licence to use those parts of the Photographic Works selected by the Photographer and presented to the Client as they wish under the instructions issued and agreed to for an indefinite period of time. Final ownership passes to the client on settlement of any outstanding monies due. The Licence includes the right (if any) to reproduce and publish the Photographic Works for the purposes and territories as set out in the Booking/Order.

3. CONDITIONS OF LICENCE

This Licence to use, and the right to use the Photographic Works commences from the date of full payment of all amounts owed to the Photographer in relation to the Photographic Works and the Agreement. The Photographer may give written request to be able to use image(s) time to time for promotional purposes.

4. ASSIGNMENT OF COPYRIGHT

Where the Agreement specifies that copyright in the Photographic Works is assigned to the Client in consideration for the Client's payment for those Works:

- (a) The Photographer assigns to the Client copyright in the Photographic Works from the date of full payment of all amounts owed to the Photographer in relation to the Photographic Works and the Agreement;
- (b) It is the responsibility of the Client to obtain all model releases, moral right waivers and privacy waivers necessary for the use of the Photographic Works;

5. STORAGE AND BACKUPS

The Client acknowledges that the Client is responsible for the storage and backup of the Photographic Works supplied by the Photographer. While the Photographer will follow its usual backup procedures (if any) upon delivery of the Photographic Works, the Photographer shall not be liable under any circumstances if unable to produce backups or future reproductions of the Photographic Works upon the request of the Client. Where backups are available, these may be made available to the Client for a fee.

6. PRIVACY AND PERSONAL INFORMATION

As part of creating the Photographic Works, the Photographer may collect and retain personal information about the Client. The personal information may be used by the Photographer for communicating with the Client for any purpose relating to the Photographic Works (including arranging third party services), direct marketing and in connection with these terms and conditions. The Client authorises the Photographer to collect, retain, use personal information for these purposes (including assessing credit worthiness), and to disclose that information to any person or entity for these purposes.

7. PAYMENT

The Client shall pay the Photographer the various amounts payable in accordance with the Booking/Order and the Agreement. If the Photographer's fee and expenses are not estimated in advance, or for any goods or services different or additional to the Booking/Order, then the Client shall pay the amount invoiced by the Photographer in accordance with the Photographer's Price List or provided quote. The Photographer may require a deposit or payment of part or all of the amounts due in advance. Unless otherwise specified in the Agreement, payment of all other amounts are due no later than 14 days of invoice.

8. JOB-RELATED COSTS

The Client shall reimburse the Photographer for any and all Job-Related Costs quoted for as part of the Booking/ order. Where the Photographer makes payment to others on behalf of the Client, the Photographer may add a service charge or commission, determined at the Photographer's absolute discretion. Unless otherwise specified in the Agreement, the Client must pay all Job-Related Costs and service charges/ commissions to the Photographer within 14 days of invoice. The Client is not entitled to any property in: a Any artistic works or other materials created or supplied by the Photographer to support the Photographic Works; or b Any materials used for the creation of an artistic work, which are commissioned or arranged by the Photographer; or c Any goods used in supporting the Photographic Works Such goods, materials, authored or artistic works shall remain the property of the Photographer, unless otherwise specified in the Agreement.

9. URGENT WORK

Where the Client requires Photographic Works on an urgent basis (which includes where the Photographer is unable to re-shoot or correct a shot because of an urgent deadline) the Photographer will not be liable for any losses or damages arising out of the inability to carry out a re-shoot or the costs of arranging a re-shoot.

10. CHANGES TO THE ESTIMATE

Estimates of fees and Job-Related Costs are estimates and not firm quotations and are liable to alteration. The Photographer must bring any increase to the estimate, of 10% or more, to the attention of the Client. Any change to the job specifications made or agreed by the Client may alter the fees and Job-Related Costs.

11. OVERDUE PAYMENTS

In the event that any monies are not paid in full on the due date, the Photographer shall be entitled to: a Charge interest at a rate of 2.5% per month or part month overdue on any amounts outstanding; b Recover any debt collection costs and related legal expenses (on a solicitor-client basis); and c Suspend any further work until all amounts owing and any costs incurred are paid in full.

12. CANCELLATION OR POSTPONEMENT

When a Booking/Order is confirmed by the Client, the Client becomes liable for payment to the Photographer and the Photographer becomes liable to complete the shoot. Cancellation of the Booking/Order by the Client must be in writing and must give reasonable notice to the Photographer. Subject to any specific terms in the Agreement, if the Client cancels the Booking/Order: (a) Within 1 working day of the booked shoot day, the Client must pay a booking

fee of \$500 of the Photographer's fees (b) Giving notice of cancellation of greater than 1 working day and within 3 working days of the booked shoot day, the Client must pay a fee of \$500 of the Photographer's fees. c Giving notice of cancellation of greater than 3 working days and within 1 week of the booked shoot day, the Client must pay a fee of \$500 of the Photographer's fees.

The Client must pay the Photographer for all Job-Related Costs incurred. The Client acknowledges and agrees that these cancellation fees fairly reflect the loss suffered by the Photographer and the Photographer's ability to re-schedule work and re-allocate resources, depending upon the amount of notice given.

13. WEATHER CONDITIONS

A weather-permitting booking must be agreed between the Client and Photographer prior to the shoot. Upon postponement or cancellation of a shoot due to bad weather the Client must pay the Photographer all Job Related Costs incurred up until the time that the shoot was postponed and 50% of the Photographer's fee which was to be charged for the shoot. The Client is responsible for taking out weather insurance.

14. WORK SUSPENDED ON CLIENT'S INSTRUCTIONS

Where the Client instructs that work is to be suspended for a period of 30 days or more, the Client must, at the time of suspension, pay the Photographer for all work in progress and any Job-Related Costs incurred at that time.

15. CLIENT PROPERTY AND MATERIALS

Client property and all property and material supplied to the Photographer by or on behalf of the Client is held at the Client's risk and the Photographer accepts no responsibility for the maintenance or insurance of that property or material. The Client must pay any sum charged or incurred by the Photographer for handling or storing property or material supplied by or on behalf of the Client. Where property and materials are left with the Photographer without specific instructions, the Photographer may dispose of them at the end of six months from the date of receiving them and retain the proceeds.

16. CLIENT CONFIDENTIALITY

The Client must advise the Photographer as to whether any material or information supplied is of a confidential nature. The Photographer will keep that material or information confidential, except where disclosure is reasonably necessary to enable the Photographer to perform the Agreement.

17. INDEMNITY

The Client is responsible for obtaining any authorisation, clearance, licence or other form of approval necessary for the lawful use of third party intellectual property works.

18. COLOUR VARIATION

The Client releases the Photographer from any and all liability relating to colour reproduction of supplied works on any system not under the direct control of the Photographer. Where the Photographer supplies the Client with photographic prints, the Client acknowledges that Photographic Works may fade or discolour over time due to the inherent qualities of materials used, and releases the Photographer from any liability for any claim based upon fading or discolouration. Where a colour is unable to be reproduced accurately due to limitations in capture and output technology, the Client releases the Photographer from any and all liability in regard to colour reproduction.

19. QUALITY OF PHOTOGRAPHIC WORKS

Where Photographic Works are not of an acceptable technical quality, making it unfit for the purpose of its specified use, then no fee or Job-Related Costs are due to the Photographer. The Photographer has the right to rectify the defect within a reasonable time, having regard to the urgency of the work. If rectified, the Photographer is entitled to be paid the full fee and Job-Related Costs, but may not charge the Client any extra fee or cost for rectifying the defect. Where there is a representative of the Client at the shoot, the representative is responsible for the direction of the work. Acceptance of the work by this representative is confirmation that the Photographer has satisfied the artistic quality and interpretation requirements of the shoot. If the representative is not at the shoot then the Photographer's judgement is absolute within the limits (if any) imposed by any documented agreements on the nature of the intended work.

If the Photographer produces Photographic Works that are in the same style and structure as the Photographer's past work (by reference to the Photographer's portfolio), the Client is deemed to have accepted the Photographer's artistic interpretation.

20. CONSUMER GUARANTEES ACT 1993

1 The Consumer Guarantees Act 1993 may apply to the Photographic Works provided by the Photographer, if the Client acquires those Photographic Works for personal, domestic or household use or consumption. If this Act applies, nothing in the Agreement will limit or exclude the Client's rights under this Act. If the Client is acquiring the Photographic Works for business or trade purposes, then the Client's rights are subject to the Agreement only and the Consumer Guarantees Act 1993 shall not apply.

21. PHOTOGRAPHER NOT LIABLE FOR LOSSES

Except as provided by the Consumer Guarantees Act 1993, the Photographer shall not be liable for: a Any loss or damage arising by reason of any delay in the completion of the Photographic Works; or b Any loss of profits or revenues; or c Any indirect or consequential loss of whatever nature; or d Any loss resulting from any errors or omissions arising from an oversight or a misinterpretation of a Client's verbal instructions.

22. LIABILITY OF PHOTOGRAPHER LIMITED Subject to clause 21, the Photographer's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or connected with the performance or failure of performance of any Photographic Works or photographic services supplied by the Photographer, shall not exceed the full value of the payments made by the Client under the Agreement.

23. HEALTH AND SAFETY

The Client acknowledges and agrees that the Client is responsible for, and shall take all reasonably necessary steps to ensure, its own personal safety and that no action or inaction of the Client causes harm or risk to the health and safety of others. Notwithstanding the above, the Client agrees to comply with any reasonable health and safety directions given by the Photographer.

24. FORCE MAJEURE

Except for an obligation to pay money, neither the Client nor the Photographer shall be liable for any act, omission or failure to fulfil its obligations, or any loss or damage arising directly or indirectly due to an act of God, explosion, fire, flood, storm, earthquake, subsidence, armed conflict, strike, lockout or labour disputes, civil commotion, intervention of a government, accidents, electrical, heat, light or telecommunication failures, interruption to transportation, weather or any other cause outside the Photographer's control.

25. DISPUTE RESOLUTION

The Photographer and the Client agree to use their best efforts to resolve any dispute which arises through good faith negotiations. Either party may raise a dispute by written notice to the other party. Within 3 working days of receipt of a dispute notice, the parties shall meet (or otherwise communicate if meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis. Neither party may commence any litigation in relation to the dispute unless 14 days have passed since the parties met (or otherwise communicated) and endeavoured in good faith to resolve the dispute on mutually acceptable terms.

26. CONFLICTS

In the event of a conflict or inconsistency between these terms and conditions and the Booking/Order, the Booking/Order shall prevail.

27. GOVERNING LAW

These terms and conditions are governed by, and to be construed in accordance with New Zealand Law. The Client irrevocably submits to the exclusive jurisdiction of the New Zealand courts.

28. ENTIRE AGREEMENT The Booking/Order, together with these standard terms and conditions and any other special conditions agreed in writing between the parties, shall constitute the entire Agreement between the parties. Each Booking/Order made by the Client shall (together with these standard terms and conditions and any other special conditions agreed in writing between the parties) constitute a separate Agreement between the parties.

29. COVID-19 PROTECTION FRAMEWORK

We're strongly committed to ensuring that we have all the appropriate measures in place for assignments that we attend or represent on behalf of our clients.

Keeping communities protected is paramount.

We believe that having a prevention focused lens and clear communication with those we work alongside will ensure our community will stay protected and individuals will feel safe.

We will update our terms and conditions as we are provided with updated information from the New Zealand Government and discuss these with our client as need to arises.

Communication: We will make sure our clients know what protective measures we have in place and we will follow as required in Government and venue guidelines

- Face coverings and hygiene
- Use of masks, hand sanitiser etc.
- Clean or disinfect shared surfaces often
- Social distancing as required

DEFINITIONS

For the purposes of the Agreement, the following definitions shall apply unless the context requires otherwise:

Advertiser: means the end user of the Photographic Works where the Photographer is engaged to produce the Photographic Works by an advertising agency, design firm, or other intermediary.

Agreement: means the Booking/Order, together with these standard terms and conditions and any other special conditions agreed in writing between the parties.

Booking/Order: means an order or request by the Client for the production, supply or viewing of Photographic Works, including (without limitation) bookings, orders, quotes, estimates, proposals, and appointments made for a shoot, sitting or viewing.

Client: means the person or entity listed on the Booking/Order who engages or instructs the Photographer to produce Photographic Works.

Job-Related Costs: means any costs and expenses incurred by the Photographer on the Client's behalf in providing photographic services or in the creation of the Photographic Works.

Licence: is a right granted by the Photographer to the Client to use the copyright works of the Photographer on the terms set out above.

Photographic Works: means the deliverable works specified in the Booking/ Order and created or supplied by the Photographer, including photographs, photographic prints, moving images (video), transparencies, negatives, digital files, and images in any form or medium.

Photographer: means the photographer and where the context requires may include, the studio, photographic company, employees or sub-contractors.

Price List: means the Photographer's list or schedule of prices for goods and services at the date of the Agreement.