

H JONES PHOTOGRAPHY GENERAL TERMS AND CONDITIONS

1. 1. Overview

- 1.1 The terms and conditions set out in this Schedule are the "Terms and Conditions" referred to in the key terms to which this Schedule is appended (the "**Key Terms**"). Any term capitalised in these Terms and Conditions will have the meaning given to that term in the Key Terms unless specifically defined in these Terms and Conditions.
- 1.2 If there is any inconsistency between the provisions of the Key Terms and these Terms and Conditions, the provisions of the Key Terms will prevail.

2. The Photo shoot

- 2.1 We will use all reasonable endeavours to hold the Photo Shoot on the Photo Shoot Date, at the Photo Shoot Location, subject to our cancellation, rescheduling and refund policy set out in section 8 below.
- 2.2 Due to the nature of the subjects of the photographs we take during your Photo Shoot ("**Photographs**"), we cannot guarantee any particular outcomes or guarantee the fulfilment of any specific requests for the Photo Shoot. However, we will conduct the Photo Shoot using professional skill and care.
- 2.3 In any event, we will endeavour to accommodate any reasonable requests from you regarding the artistic direction of the Photo Shoot, but the Photographer retains absolute discretion as to the nature of the Photographs.
- 2.4 A parent or guardian must be present at all times if we are photographing children. You must not take any photographs during the Photo Shoot without first obtaining permission from the Photographer.

3. How to order packages and artwork products

- 3.1 This section does not apply if you have selected an "all inclusive package" option where we select the Photographs to be included in your Package. Please refer to section 4 if you have selected this option.
- 3.2 Following your Photo Shoot, we will prepare and make available a selection of proofs of the Photographs from your Photo Shoot ("**Your Proofs Gallery**"). At our option, we may present Your Proofs Gallery to you either in person (refer to sections 3.5 and 3.6) or an online gallery (refer to sections 3.7 to 3.9). In either case, we aim to have Your Proofs Gallery ready within 14 days of the Photo Shoot Date, but during busy periods this timeframe may be extended.
- 3.3 The number of Photographs in Your Proofs Gallery will vary from session to session. We will take into consideration your specific requests as regards the contents of Your Proofs Gallery, but we retain absolute discretion regarding:
 - (a) which Photographs we include in Your Proofs Gallery (it being acknowledged that not all

Photographs taken during the Photo Shoot will be included); and

- (b) the application of any digital editing to any Photographs.
- 3.4 Requests you make for specific corrections to images, or re-editing of images, may attract additional costs. We will advise you of the costs upon request. Please note that we do not provide raw images.

In Person Viewings

- 3.5 Your Proofs Gallery will be presented in person by the Photographer on a date agreed between you and the Photographer. We may charge a viewing fee (as set out in our Price List or otherwise advised to you, and which will be payable at the time of booking the viewing) as well as cancellation fees and rebooking fees if you cancel your scheduled viewing (any rescheduled viewing must take place within 2 months of your Photo Shoot Date). The Photographer will determine the format in which Your Proofs Gallery is presented. Unless otherwise agreed by the Photographer, you must make your selection of Photographs, Package and Artwork Products within 14 days from the date of the viewing/at the viewing/order session. We reserve the right to delete Your Proofs Gallery and all Photographs and/or to charge a late payment fee if you do not place an order and pay the part of the Package Fee due at the time of placing the order during that time.
- 3.6 If we offer an online gallery option, you may be invited to order from Your Proof Gallery through an online gallery after your presentation, subject to payment of an uploading fee. The section below entitled "*Viewing Your Proofs From an Online Gallery*" will apply if you select this option.

Viewing Your Proofs From an Online Gallery

- 3.7 Your Proofs Gallery will be presented as an online gallery comprising low resolution web-sized watermarked files. We will advise you by email when Your Proofs Gallery is ready for you to view. Your Proofs Gallery will be available for 14 days from the date of the email. Unless otherwise agreed by the Photographer, you must make your selection of Photographs, Package and Artwork Products within this availability period. We reserve the right (at our option) to charge a fee for extending the availability of Your Proofs Gallery, or to delete Your Proofs Gallery and all Photographs if you do not place an order and pay the part of the Package Fee due at the time of placing the order during that time.
- 3.8 Your Proofs Gallery may be subject to password-protection. Only you may access Your Proofs Gallery. You are solely responsible for maintaining the confidentiality of any password we provide and you may not disclose your password to any other person. You agree to accept responsibility for all activities that occur through use of your password by a third party.
- 3.9 You acknowledge that: (i) your access to and use of Your Proofs Gallery may be suspended during any

unanticipated or unscheduled downtime or unavailability of any portion or all of our website, including as a result of power outages, system failures or other interruptions; and (ii) we are entitled, without any liability to you, to suspend access to any portion or all of Your Proofs Gallery and/or our website at any time (a) for scheduled downtime to permit us to conduct maintenance or make modifications to Your Proofs Gallery or our website; (b) in the event of a denial of service attack or other attack on our website and/or our servers or other event that we determine, in our sole discretion, creates a risk to you or to any of our other users; or (c) if it is necessary or prudent to do so for legal or regulatory reasons (collectively, "Service Interruptions"). Where practicable, we will endeavour to post updates on our website regarding any Service Interruption and resumption of service following any such suspension, but we are not liable for the manner in which we may do so or if we fail to do so and we shall have no liability whatsoever for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that you may incur as a result of any Service Interruption.

4. All inclusive packages: photographer selection of photographs

4.1 If you have selected an "all inclusive package" option where we select the Photographs, we will take into consideration your specific requests as regards the Photographs to be included in your Package, but we retain absolute discretion regarding:

- (a) which Photographs we include in the Package; and
- (b) the application of any digital editing to any Photographs.

4.2 Requests you make for specific corrections to images, or re-editing of images, may attract additional costs. We also accommodate specialist or bespoke requests for retouching of Photographs at additional cost. We may need to refer certain retouching services to our third party partners. We will advise you of the costs upon request. Please note that we do not provide raw images.

5. Artwork Products

If you order an Artwork Product, a proofed layout of the Artwork Product, together with any options available to you, will be submitted to you for approval before the Artwork Product is printed. You may request reasonable changes as part of the approval process, but some changes may be subject to additional charges. We will advise you if additional charges apply. We will not submit any Artwork Product for printing unless and until the proofed layout has been approved by you and you have confirmed your options (where available). You will be liable for any costs associated with any changes requested after you have approved the proofed layout.

6. Delivery

We will let you know when you place your order when to expect to receive the Package and Artwork Products (as applicable). Lead times from receipt of your order and payment typically start at two weeks for digital images (without retouching) and up to two months for some Artwork Products. Any delay in payment of fees payable to us will affect the delivery period. If your Package includes digital images, these will be delivered on media storage by post to the address specified in the Key Terms. Artwork Products will be delivered to the address specified in the Key Terms. Risk in the Package and Artwork Products will pass to you upon delivery.

7. Archiving

7.1 Your Photographs may be destroyed or archived at our discretion after the expiration of the applicable ordering period referred to in these Terms and Conditions. Subject to receipt of an order for a Package or Artwork Products and payment of the Package Fee, we will archive your Photographs for a period of 5 years. We are happy to archive your Photographs beyond this period, subject to payment of the storage fee we specify.

Any orders placed once your Photographs have been archived will incur a retrieval fee, in addition to the cost of the order.

At your request and subject to payment of any fees we may charge, we may agree to reinstate a Your Proofs Gallery that has been archived, or extend the viewing period for a Your Proofs Gallery that is still active. We are unable to reinstate a Your Proofs Gallery that has been destroyed.

8. Cancellation, RESCHEDULING and refund policy

Cancellation

8.1 Legal right of cooling off. You have 14 days after the day we accept your booking to cancel the Photo Shoot; this is called the cooling off period. However, once we have completed the Photo Shoot you cannot change your mind, even if the cooling off period is still running. If the cooling off period is still running and you decide to cancel after we have started the Photo Shoot, you must pay us for the services provided up until the time you tell us that you have changed your mind. We will refund you the Total Session Fee by the method you used for payment within 14 days, less the cost of any photography services already provided up to the time of cancellation (including any Supplemental Session Fees). We offer additional cancellation rights that apply once the cooling off period has expired. These are set out below.

8.2 Additional Cancellation Rights. In addition to your legal rights referred to above, you are entitled to a full refund of the Session Fee if you cancel your Photo Shoot no later than 14 days prior to the Photo Shoot Date. Except in exceptional circumstances and in our sole discretion, we are unable to refund the Session Fee if you cancel after this date, but you may request that the Photo Shoot Date is

rescheduled. Any Supplemental Session Fees paid or payable to a third party are only refundable to you following cancellation of the Photo Shoot if we are ourselves able to obtain a refund from the third party.

- 8.3 If you wish to cancel the Photo Shoot, please contact us using the phone or email details in the Key Terms. Alternatively you may complete and email to us the form attached to these Terms and Conditions.
- 8.4 We may cancel your Photo Shoot for any reason prior to the Photo Shoot Date. We will then provide a full refund of the Total Session Fee, unless we agree a rescheduled Photo Shoot Date with you.
- 8.5 We may terminate your Photo Shoot on the Photo Shoot Date if we consider there are extenuating circumstances, for example, inappropriate behaviour or a Model is ill. We are not required to reschedule the Photo Shoot or refund any of the Total Session Fee to you in these circumstances.

Rescheduling

- 8.6 You should give us as much notice as possible if you wish to change the Photo Shoot Date. Occasionally, we may need to reschedule the Photo Shoot Date (for example, weather conditions and events outside our control) and, in such event, we will give you as much notice as possible. We will use reasonable endeavours to reschedule the Photo Shoot to a date that suits you, but cannot promise that an appropriate date will be available.
- 8.7 You may reschedule the Photo Shoot Date once at no cost to you, after which you must pay a fee equal to 50% of the Session Fee each time you wish to further change the Photo Shoot Date. Any Supplemental Session Fees paid or payable to a third party are only refundable to you following rescheduling of the Photo Shoot if we are ourselves able to obtain a refund from the third party. You may be required to pay further Supplemental Session Fees in connection with the rescheduled Photo Shoot Date.
- 8.8 Rescheduled Photo Shoot Dates may not be cancelled.

Newborn Photo Shoots

- 8.9 For Photo Shoots of newborn babies, we schedule the Photo Shoot to take place between the 4th and 14th day of your baby's due date.
- 8.10 If your baby's actual birth day means the scheduled Photo Shoot does not fall within this period, then we will usually offer you an alternative date that falls within the 14 day period following your baby's birth. If the Photographer is not available during that period, we will:
- offer you the next available date; or
 - if that date is not acceptable to you, provide you with a full refund of the Session Fee (in which case, your contract with us will terminate).

Defective Items and Returns

- 8.11 We are under a legal duty to supply Packages and Artwork Products that are in conformity with these Terms and Conditions. You should check your delivered Package and Artwork Products and advise us in writing of any defects or errors as soon as possible. Nothing in these terms will affect your legal rights.

Order Cancellation

- 8.12 Your Photographs and Artwork Products are personalised for you so you do not have any right to cancel your order and we are unable to refund or offer an exchange if you change your mind. This doesn't affect your statutory rights.

9. Fees and payment

- 9.1 You must pay the Total Session Fees in accordance with the terms of payment specified in the Key Terms. If any payment is due prior to the date of the Photo Shoot, full payment must be received in order to confirm your booking. The Total Session Fees are only refundable in accordance with our Cancellation, Rescheduling and Refund Policy set out in section 8 above.
- 9.2 The fee that you pay for your Artwork Products or Package will depend on which Package and Artwork Products you select. Prices for all of our Packages and Artwork Products are set out in our full Price List, which is available on request. Our prices are guaranteed for a period of 90 days from the Photo Shoot Date and after that our prices are subject to change on notice.
- 9.3 You must pay the Package Fee applicable to the Package and Artwork Products you order in accordance with the terms of payment set out in the Key Terms. No part of your order will be delivered unless and until we receive payment in full of all amounts due.
- 9.4 Unless otherwise stated, all fees that are quoted to you by us are inclusive of VAT, if applicable.

10. Liability

- 10.1 We maintain professional indemnity insurance and whilst we make every effort to ensure that your Photo Shoot is a safe and enjoyable experience and that you receive Photographs and Artwork Products you will cherish, occasionally things go wrong. This section outlines our liability to you in those circumstances.
- 10.2 Our aggregate liability to you due to, under and/or arising out of or in connection with these Terms and Conditions in contract, tort (including negligence), breach of statutory duty or otherwise, will not exceed the Total Session Fees and Package Fee actually paid by you to us in relation to the Photo Shoot and your order. We will not be liable to you for:
- your loss of profit, loss of anticipated savings, loss of revenue or earnings, or loss of business (in each case, whether direct or indirect); or

(b) any indirect or consequential loss.

10.3 Nothing in these Terms and Conditions will in any way exclude or limit our liability to you for:

- (a) death or personal injury caused by our negligence;
- (b) fraud or fraudulent misrepresentation; and/or
- (c) any other matter for which it would be illegal to exclude or attempt to exclude our liability.

10.4 Unless the Photographer enters into these Terms and Conditions in his or her personal capacity or as a sole trader, the Photographer is not a party to these Terms and Conditions and has no liability to you in connection with the Photo Shoot or the Photographs pursuant to these Terms and Conditions.

10.5 Except as set forth in this section 10, to the fullest extent permitted by law, we disclaim all warranties, implied or express.

11. Intellectual property rights

11.1 We will be the first owner of any copyright in the Photographs, under section 11 of the Copyright, Designs and Patents Act 1988, as the author of the artistic works that are the Photographs. No right, title or interest in the Photographs or any copyright therein is granted to you, except as expressly set out in these Terms and Conditions.

11.2 If you purchase Artwork Products, you will own the Artwork Product, that being the medium on which a Photograph is printed, once you have paid for it in full. Copying, scanning or other reproduction of an Artwork Product is an infringement of our rights and is strictly prohibited.

11.3 If you purchase a Package comprising digital images, you are entitled to create Artwork Products using the digital image for your own personal use and you will own the medium on which the digital image is printed. In all cases, your ownership of the Artwork Product is subject to our ownership of the copyright and other intellectual property rights embodied in the Photographs.

11.4 Without our prior consent, you undertake not to (a) use any Artwork Product or digital images that are provided to you for any commercial purpose, or (b) crop, resize, edit, manipulate or otherwise alter any Artwork Product or digital image provided to you. We may apply anti-copying measures to all Artwork Products that are provided to you in any Package and to any digital images that are displayed on our website or in Your Proofs Gallery. You agree not to try to circumvent any such measures.

12. Privacy

We use and process your personal information in accordance with our Privacy Policy, a copy of which is included with these Terms and Conditions.

13. Miscellaneous

13.1 *Entire agreement*: The Key Terms and these Terms and Conditions contains the entire agreement

between you and us with respect to their subject matter.

13.2 *Confidentiality*: Each party will keep confidential and not disclose to any third party or use (except as contemplated by these Terms and Conditions), any non-public information obtained from the other party that is marked or otherwise designated confidential ("Confidential Information"); provided, however, that neither party shall be prohibited from disclosing or using Confidential Information that: (i) is publicly available or becomes publicly available through no act or omission of the receiving party, (ii) is or has been disclosed to such party by a third party who is not under an obligation of confidentiality with respect thereto, (iii) is or has been independently developed by such party, without use or reference to the other party's confidential information, or (iv) must be used or disclosed under court order or applicable law, provided such use or disclosure is to the minimum extent required by such court order or applicable law. You also agree not to disclose the terms of these Terms and Conditions to any third party.

13.3 *Events Outside Our Control*: If we are prevented or delayed from carrying out the Photo Shoot or supplying your Package or Artwork Products by an event outside our control (including acts of god, fault or failure of equipment, software, hardware, networks or infrastructure or failure by third parties), then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for failure or delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any goods or services you have paid for but not received.

13.4 *Governing law and jurisdiction*: The Key Terms and these Terms and Conditions, and any dispute or claim arising out of or in connection with them or the Photo Shoot ("**Dispute**"), whether of a contractual or non-contractual nature, will be governed by and construed in accordance with the laws of England. You and we irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any Dispute.

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