

COMMERCIAL PHOTOGRAPHY CONTRACT

DETAILED TERMS AND CONDITIONS

1. Content of this Agreement

The parties acknowledge that the content of their agreement in relation to the Photographer's provision of Services to the Client incorporates:

- a) the Schedule set out above ("the Schedule");
- b) any detailed Brief annexed to this Agreement; and
- c) the terms as set out below,

collectively "this Agreement".

2. Engagement and Services

The Client agrees to engage the Photographer and the Photographer agrees to accept the Client's engagement to:

- a) provide the Services to the Client; and
- b) upon receipt of full payment of the Fees and the Expenses, grant to the Client the License for the Term and for the Uses in the Territory.

3. Variations to the Schedule

- 3.1. Any changes to the Services must be agreed by the parties in writing, including by email. Neither party may vary the Services of the engagement as set out in the Schedule unless or until the parties have agreed to do so in writing.
- 3.2. Should the Client request a change to the Shoot Date or Shoot Location, the Photographer will endeavour to accommodate the Client's request. If accommodating the requested change results in additional Expenses for the Photographer (for example additional travel expenses), the Client will be liable to reimburse the Photographer for those additional Expenses.
- 3.3. Should the Client wish to extend the License, Uses, Term or Territory, the parties will negotiate in good faith and any variation to this Agreement must be recorded in writing.

4. Failure to Attend and Cancellation

- 4.1. Should the Client fail to attend the Shoot, without providing adequate notice to the Photographer or negotiating an agreed date to reschedule, the Client will be liable to pay the Fees and Expenses in full despite the Services not being performed.
- 4.2. Should the Client cancel the Shoot by giving less than the required number of days' notice as specified in Item 5 of the Schedule, the Cancellation Fee is payable by the Client and any Deposit already paid to the Photographer will not be refunded.
- 4.3. Should the Client fail to attend the Shoot, without providing adequate notice to the Photographer or negotiating an agreed date to reschedule, the Client will be liable to pay the Fees and Expenses in full despite the Services not being performed.
- 4.4. Should the Client cancel the Shoot by giving less than the required number of days' notice as specified in Item 5 of the Schedule, the Cancellation Fee is payable by the Client and any Deposit already paid to the Photographer will not be refunded.
- 4.5. Arrangements will be made to reschedule or refund where such failures is occasioned by causes beyond its reasonable control as defined under 22.1.

5. Fees

In payment for the Services, the Client will pay to the Photographer the Fees (plus GST if applicable).

6. Expenses

The Client authorises the Photographer to incur and agrees to reimburse the Photographer for:

- 6.1. The Photographer's anticipated Expenses in relation to the engagement as specified in the Schedule; and

- 6.2. Any other additional and reasonable expenses incurred by the Photographer in relation to the engagement. Additional Expenses greater than Amount e.g. \$100 must be approved by the Client before being incurred by the Photographer.

7. Payment Terms

- 7.1. The Photographer will invoice the Client for the Fees and Expenses in line with the provisions of Item 5 and Item 6 of the Schedule.
- 7.2. All invoices are payable within Number e.g. 7 days of invoice date. Payment is to be made by electronic funds transfer into the Nominated Account or Cash.
- 7.3. If the Client fails to pay the Fees and Expenses in accordance with this Agreement and any invoice remains overdue after 7 days from the due date, the Photographer reserves the right to charge interest at the rate of 2.5% above the Consumer Price Index as at that date on all outstanding amounts until paid in full.
- 7.4. If any amounts remain outstanding for more than 60 days, the Photographer may refer the matter to a debt collection agency or solicitor and the Client will be liable to pay any costs the Photographer incurs or becomes liable to pay for the collection of such unpaid amounts, including but not limited to debt collection fees, charges and commissions and legal fees and costs on a full indemnity basis.

8. Use of Third Parties

- 8.1. The Client agrees that the Photographer may use third party assistants to assist the Photographer in delivering the Services to the Client.
- 8.2. Should the Photographer use any assistants, the Photographer will remain the head photographer and will remain responsible for the delivery of the Services in accordance with this Agreement.

9. Intellectual Property

- 9.1. All Intellectual Property created by the Photographer in the course of this engagement (including but not limited to the Photographs, digital or electronic material, negatives (and the digital equivalents) and prints of or relating to the Photographs, collectively the "Works") will be the exclusive and sole property of the Photographer. Any derivatives of the Works will also be the exclusive and sole property of the Photographer, regardless of whether such derivatives are created by the Photographer or the Client, and the Client hereby agrees to sign all documents and do all things necessary to assign all Intellectual Property Rights in such derivative works to the Photographer.
- 9.2. No interest in the Works (including in the negatives or digital equivalent) is assigned or licensed to the Client by this Agreement unless otherwise specified in the Schedule or in 10 below.

10. Rights in the Photographs granted to the Client

- 10.1. In consideration of the full payment of the Fees and Expenses by the Client, the Photographer grants to the Client the License to use the Photographs for the intended Uses during the Term and throughout the Territory. The License granted is not effective until both parties have signed this Agreement, and the Photographer has received the Client's payment of Fees and Expenses in full and in cleared funds.
- 10.2. The Photographer retains all moral rights attached to the Works.
- 10.3. The Client is granted the right to use the Photographs for the intended Uses specified in this Agreement, including but not limited to, posters, social media, websites, internal documents, and promotional materials. The Client may also make reasonable modifications to the Photographs to suit these specific marketing needs, such as, but not limited to, adding text overlays, logos, graphics, cropping, resizing, and minor colour adjustments, without seeking prior consent from the Photographer. However, any modifications must not substantially alter the original artistic intent or integrity of the original photograph.
- 10.4. Notwithstanding the License granted under this Agreement, the Photographer reserves the right to use the Photographs during the Term and within the Territory for the purposes of promoting and marketing the Photographer's business. This includes but is not limited to displaying the Photographs (or any of the Works) in the Photographer's portfolio (whether digital or hardcopy), on the Photographer's website, on the Photographer's social media accounts, and in galleries or photography competitions.
- 10.5. The Photographer expressly reserves all other rights subsisting in the Works not specifically granted in this Agreement.

11. Attribution Credits

If Credits are specified in the Schedule, then the Client must cause an attribution to be published on or near each Photograph on each occasion it is published or used by the Client in accordance with the provisions specified in Item 11 of the Schedule.

12. Work Standards and No Warranty

- 12.1. The Photographer will deliver the Services in a professional manner, in good faith and with all requisite care and skill, however the Photographer does not make any warranty or guarantee as to the Client's satisfaction with the Photographs. Every reasonable effort will be made by the Photographer to take the photographs requested by the Client, but no specific pose or photograph is guaranteed. Any photograph request list supplied by the Client will be used by the Photographer for organisational purposes only. Any indications given by the Photographer prior to the engagement are examples only, based on experience. These must not be relied on to predict future results. The Client warrants that they have not relied on any warranty, guarantee or representation given by the Photographer in entering into this Agreement.

- 12.2. The Client acknowledges that the Photographer is not liable for any impact on the quality of the Photographs as a result of circumstances beyond the Photographer's control, such as inclement weather conditions or the unruly behaviour of persons being photographed.

13. Delivery and release

- 13.1. The Photographer retains the right of discretion in selecting the Photographs released to the Client. Images determined by the Photographer to be sub-standard or duplicated will be deleted. The Photographer will use professional judgment and sole discretion to select the Photographs for release and such selection is the only material that will be made available to the Client.
- 13.2. The Photographs selected by the Photographer will be made available to the Client as set out in Item 4 of the Schedule within Number e.g. 2 weeks of the Shoot Date.

14. Storage and archiving of Photographs

Unless otherwise agreed in writing, the Photographer is not responsible for the storage or archiving the Photographs on the Client's behalf. It is the Client's sole responsibility to ensure the safe and secure storage of Photographs once they have been provided to the Client by the Photographer. The Photographer will be under no obligation to reproduce or replace photographs lost due to the Client's failure to do so.

15. Client Responsibilities, Warranty and Indemnity

- 15.1. It is the Client's responsibility to provide the items set out in Item 12 of the Schedule.
- 15.2. The Client warrants to the Photographer that:
- a) It has capacity to enter into this Agreement; and
 - b) It has obtained all appropriate releases and clearances in relation to the subject matter to be photographed; and
 - c) It will only use the Photographs as permitted under this Agreement.
- 15.3. The Client agrees to indemnify, hold harmless and defend the Photographer against any and all third-party claims, losses, injuries, damage or liabilities (including reasonable legal costs) arising out of or in connection to a breach of the Client warranties given above.
- 15.4. The Client further agrees to indemnify the Photographer for the costs of any repairs or replacements (at market value) to the Photographer's equipment caused by the Client or a person under the Client's control.

16. Non-Disparagement

- 16.1. The Client acknowledges that the Photographer has established a valuable reputation and goodwill in Australia in the area of photographic services. Subject to law and the rights of the Client in connection with the enforcement of this Agreement, the Client may not at any time:
- a) disparage, permit or authorise the disparagement of the Photographer, any of its related entities or any director, officer, employee, agent, consultant or adviser of the Photographer or of its related entities; or
 - b) otherwise make, permit or authorise the making of any statement in anyway relating to or connected with any matters in dispute which is calculated or is reasonably likely to cause damage to the Photographer, any of its related entities or any director, officer, employee, agent, consultant or adviser of the Photographer or its related entities (including damage to their respective reputations).
- 16.2. This clause survives termination of this Agreement.

17. Promotion

The Client consents to the Photographer using the Client's name, trade marks and general details of the engagement to promote its business.

18. Limitation of Liability and Indemnity

- 18.1. Nothing in this Agreement is intended to exclude any right or guarantee to which the Client is entitled under the Australian Consumer Law.
- 18.2. Where the Services fall within the scope of the Australian Consumer Law, the Photographer's liability to the Client is limited to the fullest extent permissible by law, including by limiting liability under section 64A of the Australian Consumer Law to providing the services again or the cost of providing the services again (at the Photographer's option). The Photographer specifically excludes liability for negligence. To the maximum extent permissible by law, the Photographer excludes liability for consequential loss or damage, including loss of business profits or reputational damage.
- 18.3. Where the scope of the Services fall outside the scope of the Australian Consumer Law, the Photographer excludes all liability to the Client (including for negligence and consequential loss or damage, including loss of business profits or reputational damage) and the Client hereby waives, releases and discharges, on a continuing basis, all claims they have or may have against the Photographer relating to the provision of the Services, however arising.

19. Electronic Transmission Risks

- 19.1. The parties will communicate electronically with one another for the purpose of this Agreement using email and data storage devices, including cloud-based storage facilities such as Dropbox, Google Drive or OneDrive.
- 19.2. The parties acknowledge and agree there are some delivery risks in using email and other electronic communication and document storage and sharing methods and that computer viruses and similar damaging items can be transmitted through these methods.
- 19.3. The parties undertake to use appropriate electronic and information technology protections and protocols (such as password protection and virus-scanning software) to reduce these risks.
- 19.4. The parties acknowledge that it is not possible to eliminate the risk of introducing viruses altogether, accept the risk of interception of emails by third parties or of non-receipt or delayed receipt of emails and hereby release one another from all claims, losses, expenses and liabilities caused by any of the risks referred to above and arising directly or indirectly out of that communication.

20. Termination

- 20.1. Either party may terminate this Agreement:
 - a) on Number e.g. 14 days' written notice to the other party;
 - b) by agreement of the parties; or
 - c) as otherwise set out in this Agreement.
- 20.2. The Photographer may terminate this Agreement:
 - a) immediately on written notice to the Client, if the Client engages in conduct which the Photographer reasonably considers to be illegal, immoral, unfair or deceptive, or which may otherwise jeopardise the Photographer's name, reputation or business;
 - b) on expiry of notice given, if the Client breaches a term of this Agreement and fails to remedy the breach within 14 days after having received notice in writing of the breach; or
 - c) immediately on written notice to the Client, if an Insolvency Event occurs in relation to the Client.
- 20.3. If termination is disputed, it will be dealt with in accordance with the dispute resolution provisions of this Agreement.

21. Consequences of Termination

- 21.1. If this Agreement is terminated, all rights and obligations accrued up to the date of the termination (including, in particular, the Client's obligation to pay Fees and Expenses including the Cancellation Fee if applicable) are not affected.
- 21.2. Any and all rights in the Photographs that may have been transferred to the Client immediately revert to the Photographer.
- 21.3. This clause and any other clause which by its nature is intended to survive termination, will survive termination of this Agreement.

22. Force Majeure

- 22.1. The Photographer will not be liable to the Client for any loss caused by any failure to observe the terms and conditions of this Agreement, where such failure is occasioned by causes beyond its reasonable control including, but not limited to, by fire, flood, other extreme weather event or natural disaster, riot, strike, act of war, terrorist attack, nuclear event, pandemic, epidemic, widespread contagion, quarantine restriction, critical infrastructure failure, severe disruption to virtual infrastructure, restriction or prohibition or any other action by any government or semi government authority, or major injury or illness of key personnel.

23. Dispute Resolution

- 23.1. If a dispute arises between the parties, the party claiming the dispute must not commence any court or arbitration proceedings (except where they seek urgent interlocutory relief), unless they have first complied with this clause.
- 23.2. The party claiming the dispute must first inform the other party in writing of the following:
 - a) the nature of the dispute;
 - b) the outcome they desire to resolve the dispute, and
 - c) the action they believe will settle the dispute.
- 23.3. On receipt of the notice by the other party, both parties will make every effort to resolve the dispute by mutual negotiation within 20 Business Days.
- 23.4. If the parties are unable to resolve the dispute in that time, the parties must agree on selection of a mediator (if the parties are unable to agree, they agree to request that the President of the Law Society of New South Wales appoint a mediator) and will be equally liable for the fees and reasonable expenses of the mediator and the cost of the venue of the mediation (to be paid in advance). The parties must each pay their own costs associated with the mediation, which must be held in Sydney, Australia, unless otherwise agreed in writing.

23.5. All communications made by the parties arising out of this dispute resolution clause are confidential and to the maximum extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

23.6. This clause survives termination of this Agreement.

24. Acceptance

The Client will be taken to have accepted the offer contained in this Agreement:

- a) on receipt by the Photographer of the Deposit; or
- b) on written acceptance of this Agreement (including via email); or
- c) on signing this Agreement,

whichever occurs first. The Photographer will not be under any obligation to commence delivery of the Services unless or until acceptance of this Agreement is provided by the Client in the form requested by the Photographer.

25. General

The following additional terms and conditions apply to this Agreement:

- 25.1. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.
- 25.2. The parties acknowledge that this Agreement is intended as an agreement for the provision of Services and creates the relationship of principal and contractor and not any other relationship and, in particular, not the relationship of employer and employee, principal and agent or the relationship of partnership.
- 25.3. This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this Agreement.
- 25.4. If anything in this Agreement is unenforceable, illegal or void, it is severed, and the rest of the Agreement remains in force.
- 25.5. Any waiver by any party to a breach of this Agreement will not be deemed to be a waiver of a subsequent breach of the same or of a different kind.
- 25.6. Neither party will be liable to the other party for any loss caused by any failure to observe the terms and conditions of this Agreement where such failure is occasioned by causes beyond its reasonable control including, but not limited to, by fire, flood, riot, strike, war, restrictions and prohibitions or any other actions by any government or semi government authorities, theft, cyber theft or major injury or illness of key personnel.
- 25.7. Any amendment or variation to this Agreement (such as a change to the Services to be provided) is not effective unless it is agreed in writing by both parties, unless otherwise set out in this Agreement.
- 25.8. The law of New South Wales governs this Agreement and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 25.9. A notice required to be given to a party under this Agreement must be in writing and delivered to that party in one of the following ways:
 - a) delivered personally;
 - b) posted to their address, when it will be treated as having been received on the second Business Day after posting; or
 - c) sent by email to their last-notified email address, when it will be treated as received when it enters the recipient's information system or otherwise when the recipient confirms receipt, whichever occurs first.

26. Definitions

The terms in this clause have the following meanings, unless the context indicates otherwise:

- a) Agreement means this agreement between the Photographer and the Client.
- b) Credits means attribution credits as specified in Item 11 of the Schedule, if any.
- c) Australian Consumer Law means Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- d) Business Day means a day on which banks are open for business in Sydney, other than a Saturday, Sunday or public holiday.
- e) Cancellation Fee means the cancellation fee specified in Item 5 of the Schedule.
- f) Consumer Price Index means the percentage increase in price for fixed basket of goods and services purchased by the average household in 8 capital cities around Australia for the year to the latest quarter, as determined by the Australian Bureau of Statistics.
- g) Deposit means the non-refundable deposit specified in Item 5 of the Schedule.
- h) Expenses means the expenses set out in Item 6 of the Schedule.
- i) Fees means the Fees set out in Item 5 of the Schedule.

- j) Insolvency Event includes any event which indicates that the party in question is unable to pay their debts as they fall due, including any of the following events:
- 26.1.j.1. becoming unable to pay debts as they fall due;
 - 26.1.j.2. an act of bankruptcy;
 - 26.1.j.3. enter into a composition or arrangement with creditors;
 - 26.1.j.4. execution levied by creditors, debenture holders or trustees under a floating charge;
 - 26.1.j.5. institution of any actions or proceedings, whether voluntary or compulsory, which has the object of or which may result in winding up (except for the purposes of reconstruction);
 - 26.1.j.6. making of a winding up order; and
 - 26.1.j.7. appointment of an official manager, receiver, receiver/manager, provisional liquidator or liquidator, but does not include a transfer of ownership.
- k) Intellectual Property Rights means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration, and all digital and electronic rights.
- l) Licence means the license set out in Item 7 of the Schedule.
- m) Nominated Account means the account maintained by the Photographer with the following details:
- | | |
|------------------------|--------------------------|
| <i>Account Name:</i> | <i>Tyneesha Williams</i> |
| <i>BSB Number:</i> | <i>112-879</i> |
| <i>Account Number:</i> | <i>439 993 598</i> |
- n) Photographs means the photographs that will be delivered to the Client by the Photographer as a result of the Shoot.
- o) Services means the Services set out in Item 1 of the Schedule.
- p) Shoot means the photographic shoot to occur on the Shoot Date and at the Shoot Location.
- q) Shoot Date means the date upon which the Shoot will occur as specified in Item 2 of the Schedule.
- r) Shoot Location means the location at which the Shoot will take place as specified in Item 3 of the Schedule.
- s) Term means the term set out in Item 9 of the Schedule.
- t) Territory means the territory set out in Item 10 of the Schedule.

27. Interpretation

In the interpretation of this Agreement:

- 27.1. References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- 27.2. Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- 27.3. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement;
- 27.4. Grammatical forms of defined words or phrases have corresponding meanings;
- 27.5. Parties must perform their obligations on the dates and times fixed by reference to Sydney, Australia;
- 27.6. Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- 27.7. If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next Business Day;
- 27.8. References to a party are intended to bind their executors, administrators and permitted transferees; and
- 27.9. Obligations under this Agreement affecting more than one party bind them jointly and each of them severally.