

EMMA O'BRIEN Portrait Photography

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "Agreement" means this document of terms and conditions;
- 1.2 "Client" means the person or organization, its representatives, successors, assignees, agents and affiliates requesting the provision of photographic services and supply of images/photographs;
- 1.3 "Commission", "Assignment" or "Shoot" means the actual process of setting up, taking and processing the image(s)/photograph(s) for the Client;
- 1.4 "Fee" means all money payable by the Client to the Photographer, however described, for work on the Assignment;
- 1.5 "Images" means video or single photographic images taken by the Photographer and recorded in any medium;
- 1.6 "Photographer" means Emma O'Brien or her employees and subcontractors.

2. GENERAL

- 2.1 This Agreement, any annexures attached to this Agreement, contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties.
- 2.2 Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, agreement, statement or other assurance (except those expressly set out in this Agreement) made by or on behalf of the other party and that (in the absence of fraud) it will not have and it hereby explicitly waives any right or remedy arising out of any representation, warranty, agreement, statement or other assurance not set out in this Agreement.
- 2.3 This agreement has been drawn with reference to a single Assignment. However, the parties intend, and now agree that all the terms shall apply so far as reasonably possible to any second or further Assignment or series of Assignments which the parties agree shall be performed under these terms.
- 2.4 No variation, addition to, deletion from or cancellation of this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by each party.
- 2.5 No indulgence granted by a party nor the partial exercise by a party of any power, right or privilege shall constitute a waiver or abandonment of any of that party's powers, rights or privileges under this Agreement and that party accordingly shall not be precluded, as a consequence of having granted that indulgence or partially exercised any power, right or privilege, from the exercise of that, or any other any power, right or privilege, which may have arisen in the past or which may arise in the future.
- 2.6 No party may cede its rights nor delegate its obligations in terms of this Agreement without the prior written consent of the other party.
- 2.7 The interpretation, construction and effect of this Agreement and the rights and obligations of the parties hereto shall be governed by the laws of the Republic of South Africa.
- 2.8 The parties consent to the jurisdiction of the Magistrate's Court in respect of any action or proceeding which may be brought against either of them by the other party arising out of this Agreement, notwithstanding that such action or proceedings would otherwise be beyond such jurisdiction, without limiting such parties right to institute action in the High Court.
- 2.9 The parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no amendment of or variation to this Agreement may be given or concluded via email.
- 2.10 In the event that any legal action is taken arising out of this Agreement or any amount remains outstanding and the Photographer instructs attorneys to recover such unpaid amounts, the Client shall be liable for all legal costs incurred by the Photographer on the attorney and own client scale.
- 2.11 By purchasing any images from the Photographer or commissioning the Photographer to perform any Assignments, the Client agrees to be bound by the terms of this Agreement.

3. PAYMENT

- 3.1 The Photographer shall supply the Client with a quote for the Assignment of the fee payable by the Client to the Photographer for the Assignment.
- 3.2 Upon completion of the Assignment, the Client agrees to make payment in full to the Photographer within 7 days. The Photographer reserves her right to request a deposit from the Client prior to the commencement of the Assignment which the Client shall make payment of before the Photographer is obliged to commence any work on the Assignment.

- 3.3 The Photographer reserves the right to charge the Client interest in respect of the late payment of any money due under this Agreement 2% per month from the due date until receipt of payment.
- 3.4 Final photographs will not be released before full payment has been made unless agreed before the shoot has commenced.

4. COPYRIGHT AND LICENSE

- 4.1 The Client acknowledges that the Photographer owns all right, title and interest in and to the Images and that the Client has no right to use any of them outside the express terms of this Agreement.
- 4.2 Money paid to the Photographer includes a fee for the grant of a licence in the terms of this paragraph. The licence arises only after the Client has paid the Photographer the money due under this Agreement. The licence is personal, irrevocable, non-transferable and non-sub-licensable.
- 4.3 The licence is restricted so that, unless the Photographer gives written authorisation, the Client may not copy any Image created by the Photographer, nor permit any other person to do so, without her permission in writing.
- 4.4 So far as any goodwill is generated by the Client's use of the Images it shall accrue to the benefit of the Photographer.
- 4.5 The Photographer reserves the right to make reproductions of Images created during assignments for marketing, promotional, competition and editorial purposes.

5. CANCELLATION

- 5.1 If the Client cancels this Agreement at least 14 days before the date of the Shoot, the Photographer may retain the deposit, but no further sum will be due.
- 5.2 If the Client cancels this Agreement within 14 days of the Shoot, the Photographer shall be entitled to charge the Client for the full amount due in respect of the intended Shoot.

6. LIMITATION OF LIABILITY

- 6.1 All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warranty or term cannot be excluded, then this sub paragraph will be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.
- 6.2 The Photographer shall not be liable to the Client for any loss or expense which is:
 - 6.2.1 indirect or consequential loss; or
 - 6.2.2 economic loss or other loss of turnover, profits, business or goodwill; or
 - 6.2.3 loss of amenity represented by the Client having no visual record of a Shoot; or
 - 6.2.4 loss or damage suffered by the Client as a result of an action brought by a third party;

the above provisions apply even if such loss was reasonably foreseeable or the Photographer had been advised of the possibility of the Client incurring it.