



New Zealand Institute of Professional Photography

Standard Terms: Portrait and Wedding Photography

All capitalised words are defined in the definitions section below.

1. INSTRUCTIONS MUST BE IN WRITING

The Client must ensure that all their instructions and expectations (or variations of such) regarding the Booking or Order are agreed in writing.

2. LICENCE GRANTED TO CLIENT

The Copyright in all Photographic Works resulting from the Booking or Order remains the property of the Photographer.

The Photographer does not accept commissions to create copyright works. In terms of the Copyright Act 1994, this means that the Photographer and the Client have agreed under clause 21(4) that clause 21(3) is overridden by these Standard Terms.

The Photographer grants the Client a Licence to use those parts of the Photographic Works selected by the Photographer and presented to the Client, however this licence does not include the right to copy, reproduce or publish the Photographic Works or any part of the Photographic Works. From the Photographer's selection, the Client may select any or all of the Photographic Works to licence.

The Client acknowledges that the purpose of the creation of the Photographic Works includes the right of the Photographer to:

- enter the Photographic Works into photographic competitions or awards and for their use in any material published in connection with promoting those competitions or awards; and
- advertise or otherwise promote the Photographer's Work; and
- submit the Photographic Works for display at art galleries or other premises.

3. CONDITIONS OF LICENCE

This Licence to use, and the right to use, the Photographic Works comes into effect from the date of full payment of the Order, except where the Photographer gives express written permission.

4. COPYRIGHT IN THE WORKS

All copyrights that arise out of the performance of the Photographer's obligations under this contract shall arise not by commission but shall be the creation of the Photographer. The Photographer shall remain the first owner of the Photographic Works and the Client shall be supplied with the Photographic Works for use on the basis of the terms of this Licence. The Client shall have the right to seek further licences for reuse of any copyright at the Photographers normal prices at the time of the request.

5. PAYMENT

The Client shall pay the Photographer the various amounts payable in accordance with the Booking and/or Order agreement(s).

6. DEBT COLLECTION COSTS

In the event of default of any amount owing, the reasonable costs of collection on a solicitor/client or debt-collector/client basis shall be payable by the Client.

7. CANCELLATION OR POSTPONEMENT OF BOOKING

Where the Client cancels or postpones a Booking appointment, the Client must pay, at the Photographer's discretion, the amounts due at any Milestones that have passed, as outlined on the Booking Agreement, regardless of whether the appointment is attended or not.

Where a booked appointment involves more than one person, it is the Client's responsibility to ensure that everyone required arrives at the appointment on time.

Failure of any person to arrive at the appointment on time will result in, at the Photographer's discretion, cancellation or postponement.

The Booking appointment and any fees paid prior to cancellation or postponement of the appointment are transferable to another person, as if

it were the original person, as long as the Booking is similar and the date and time of the appointment are not changed.

8. CLIENT CONFIDENTIALITY

The Client must advise the Photographer as to whether any material or information communicated to him/her is of a confidential nature. The Photographer will keep confidential material or information communicated to him/her in confidence for the purposes of the photography, except where it is reasonably necessary to enable the Photographer to carry out his/her obligations in relation to the Booking or Order.

9. INDEMNITY FOR BREACHES OF INTELLECTUAL PROPERTY

The Client shall fully indemnify the Photographer in respect of any claims, costs, or expenses arising out of any illegal or defamatory Photographic Works produced for the Client or any infringement of an intellectual property right of any person.

10. COLOUR VARIATION

The Client acknowledges that Photographic Works may fade or discolour over time due to the inherent qualities of dyes or materials used. The Client releases the Photographer from any liability for any claim based upon fading or discolouration.

11. IMPORTANT NOTICE – CONSUMER GUARANTEES ACT 1993

The Consumer Guarantees Act 1993 may apply to the licenced Photographic Works provided by the Photographer if the Client acquires those licenced Photographic Works for personal, domestic or household use or consumption. If this Act applies, nothing in these Standard Terms will limit or exclude the Client's rights under this Act.

If the Client is acquiring the licenced Photographic Works for business purposes, then the Client's rights are subject to these standard terms only and the Consumer Guarantees Act 1993 shall not apply. In this case the Photographer may grant a separate licence under the Standard Terms for Commercial Photography.

12. PHOTOGRAPHER NOT LIABLE FOR LOSSES

Except as provided for by the Consumer Guarantees Act 1993 the Photographer shall not be liable for:

- any loss or damage arising by reason of any delay in the completion of the Photographic Works
- any loss of profits
- any indirect or consequential loss of whatever nature; or
- any loss resulting from any errors or omissions arising from an oversight or a misinterpretation of a Client's verbal instructions arising directly or indirectly from any breach by the Photographer of any of its obligations under the Booking or Order or from any cancellation of the Booking or Order or from any negligence on the part of Photographer.

13. LIABILITY OF PHOTOGRAPHER LIMITED

The Photographer's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused, arising out of or connected with the performance or failure of performance of photographic services by the Photographer, except where provided to the contrary by the Consumer Guarantees Act, shall not exceed the full value of the payments made by the Client under the Booking and/or Order agreements.

14. ORDER MAY BE TERMINATED ON NOTICE

Effective termination of the Order by the Client must be in writing and give reasonable notice to the Photographer. The Client must compensate the Photographer for all amounts due at any Milestones that have passed (see Booking Agreement) plus the proportion of the Order that has been completed at the date of termination. Upon receipt of such notice from the Client, the Photographer must take immediate steps to bring the photographic services to a close.

Definitions

Photographic Works: includes photographic prints, transparencies, negatives and digital images created by the Photographer.

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

Order: includes a booking agreement, order agreement, invoice, or statement.

Client: means the client listed on the Booking or Order agreement.

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.

Booking – includes appointments made for a sitting, viewing and any other meeting where the Photographer has set aside specific time to meet with the Client.

Milestone: is a predefined point in the photography process where various payment terms apply as set out on the Booking and Order agreements.

(Form 902)