**The contract and documentation within should not be considered Legal Advice. Each contract should be reviewed with your personal legal adviser and items of consideration such as your business terms, jurisdiction and suitability The writer and the site this document is hosted on does not accept liability for the misuse or misunderstanding of this document.**

terms and conditions

Between the photographer specified in the Details section, including its employees or agents (**Photographer**) and the customer specified in the Application Form (**Client**). By signing this Agreement, the Client irrevocably offers to engage the Photographer to provide the Services on the terms and conditions of this Agreement.

1. definitions and INTERPRETATION
   1. Definitions

**Agreement** means the agreement between the Photographer and the Client in respect of the Services which includes the Application Form and these standard terms and conditions, as amended and published on the Photographer’s website from time to time.

**Application Form** means the Details section and the Price List.

**Associated Persons** means the Client’s guests, attendees, contractors, agents or employees or animals present at a Session [or Event].

**Claim or Claims** means any claim (whether actual or contingent) including a claim for loss, damage and expenses (including legal fees) arising out of tort, breach of statute, warranty or guarantee or breach of this Agreement.

**Damage** means any damage to or the destruction of any Equipment or personal property of the Photographer caused, whether intentionally or accidentally, by the Client or Associated Persons.

**Default Rate** means 5% per annum.

**Equipment** means the equipment which is the property of the Photographer and is used in the provision of Services and Products.

**[Event** means a private or public function at which the Photographer is engaged to provide Services.] [**NOTE:** ***OPTIONAL DEFINITION – may not apply in all cases***].

**Fee** means an amount agreed to be charged by the Photographer to the Client in relation to Services, costs connected with the Services, travel or accommodation costs, location hire costs and/or expenses and any other costs, expenses or fees.

**GST** has the meaning given by the GST Law in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property** means all present and future intellectual property rights, both in Australia and throughout the world, and includes any copyright, registered or unregistered trade mark, registered or unregistered design, registered or unregistered domain name, trade names trade secret, designs, confidential information, Knowhow, indication or source or appellation of origin or other proprietary right, or right of registration of such rights. These rights include all rights in all applications to register these rights, renewals and extensions of these rights and rights in the nature of these rights, excluding Moral Rights.

**Knowhow** means the collective industry and campaign experience, information or know how gained and owned by the Photographer through the conduct of its business by its owners, employees and contractors (whether written or unwritten).

**Moral Rights** means the right of attribution of authorship or performership, not to have authorship or performership falsely attributed and integrity of authorship or performership conferred by the *Copyright Act 1968* (Cth) and rights of a similar nature anywhere in the world, that exist now or that may come to exist in the future.

**Payment Date** means the date set out in the Price List.

**Price List** means the list of Services and Products available for purchase by the Client.

**Photograph or Photographs** means any photograph taken by the Photographer during a Session [or Event] and includes all photographs in printed and digital form, negatives, backup copies of photographs and any modification of any nature to a photograph.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Product** means any item of photography, whether digital or printed, created or amended by the Photographer which is made available for the Client to purchase in accordance with the Price List.

**Session** means the Photographer’s engagement with the Client in order to provide the Products and Services to the Client.

**Session Fee** means the agreed Fee stated in the Application Form.

**Service** means those services described in the Application Form and any service provided by the Photographer to the Client including, but not limited to, the taking of any Photographs, including those agreed to in the Application Form and any subsequent Photographs agreed to between the Photographer and the Client from time to time, the sale or supply of Products to the Client, any personal preview and ordering Session with the Client, the creation of a private web gallery for the Client to view and order Products created by the Photographer, acting as the photographer at an Event and the modification of the Products.

* 1. Interpretation

This clause outlines the rules for interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

* + 1. A reference to:
       1. legislation (including sub-ordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
       2. AUD$, A$, $A, dollar or $ is to Australian currency.
    2. If a word is defined, another part of speech of that word has a corresponding meaning.
    3. Time is reckoned as follows:
       1. A reference to the date or time of day is a reference to that date or that time of day in Queensland, Australia.
       2. If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
          1. excluding the day, or the day of the act or event; and
          2. including the day on which the purpose is to be fulfilled.
       3. If something is to be done on a particular day, it must be done by 5.00pm on that day.

1. supply of Services

In consideration of the payment of a Fee, the Photographer agrees to provide Services to the Client.

1. Fees
   * 1. The Client must pay any Fee into the Photographer’s nominated bank account on or before the Payment Date.
     2. The Client must pay any Fee in full, free and clear of any deductions and withholdings or otherwise in such manner as the Photographer directs.
     3. In the event that a Fee is not paid or is not paid in full, the Photographer may withhold the printing, delivery or uploading of any Products or the provision of Services to the Client until the outstanding balance is paid.
     4. Any legal or agent expenses incurred as a result of the Client’s failure to pay a Fee will be borne by the Client on a full indemnity basis.
2. Interest on Overdue Payments [optional clause]

If any part of a Fee or any other amount required to be paid by the Client to the Photographer under this Agreement is not paid on or before the Payment Date, the Client must pay interest at the Default Rate for any period for which any part of the Fee or other moneys are overdue.

1. retainer

A retainer is to be paid by the Client to the Photographer upon the booking of a Session or Event. This retainer is non-refundable.

1. cancellation, failure to attend or Rescheduling of a session
   * 1. If the Client fails to attend or cancels a booked Session without providing the Photographer with at least 14 days notice, the Client will forfeit the Session Fee.
     2. If the Client provides the Photographer with at least 14 days notice of the cancellation or rescheduling of a Session, there is no effect on any monies paid and the Session will be transferred to the new date.
     3. Notice of rescheduling or cancellation may be given in person, or by telephone call, letter, fax or email.
     4. The Client may only reschedule a Session [or Event] once. Should the Client wish to reschedule a Session or Event a second time, the Photographer in their discretion may elect to reschedule the Session [or Event] or cancel the Client’s appointment and retain the Session Fee.
2. damage [optional clause]

The Client agrees to indemnify the Photographer for the costs of replacement and/or repair necessarily incurred as a result of any Damage to Equipment, except where the Damage is caused by reasonable wear and tear. The Client will indemnity the Photographer for any replacement Equipment purchased at current market prices.

1. PRIVACY
   * 1. The Photographer may collect personal information about the Client in the course of the Photographer’s engagement with the Client and will treat this information in accordance with the Privacy Act.
     2. Subject to the requirements within the Privacy Act, the information disclosed by the Client to the Photographer may be used:
        1. to provide Services to the Client,
        2. to fulfil administrative functions associated with these Services;
        3. to enter into contracts with the Client or third parties; and
        4. for marketing and client relationship purposes.
2. use of third parties

The Photographer may, at its discretion, engage third parties to provide any Services to the Client.

1. Rights of Use
   * 1. The Client is authorised to use the Products for personal use only, including loading the Products onto their personal social media accounts, submission into competitions and [insert].
     2. The Client is prohibited from:
        1. selling or distributing Products commercially; and
        2. copying, scanning, duplicating, printing or distributing any Products in any way without the Photographer’s written permission.
     3. The Client is only permitted to reproduce Photographs with the inclusion of the Photographer’s unaltered watermark.
     4. The Client irrevocably consents to the Photographer:
        1. using, copying and publishing any

Photographs taken of the Client and/or the Client’s friends and family in any form, using any and all forms of media whatsoever, including posting the photographs on the internet and social networking media;

* + - 1. using any Photographs taken of the Client and/or the Client’s friends and family for any promotional, advertising, portfolio, marketing or trade purposes, including posting the photographs on the internet and social networking media; and
    1. The Client agrees to not pursue legal action against the Photographer for any reproduction or publication of these photographs.

1. Ownership of intellectual property
   * 1. The Photographer shall exclusively own the Intellectual Property rights to all Products, including Products delivered to the Client.
     2. The Client may pay an additional Fee to acquire the copyright to a Photograph ***[OPTIONAL CLAUSE]***.
     3. The Client agrees at all times to:
        1. not cause or permit anything to be done which may damage or endanger the Photographer’s title to Intellectual Property;
        2. not instruct for, create or write software to perform any of the purposes for which the Photographer’s website, mobile application and other online technological services are used;
        3. indemnify the Photographer for any loss, Claim or expense arising from the Client’s misuse of the Intellectual Property;
        4. not use any name or mark similar to or capable of being confused with any name or mark of the Photographer;
        5. not use the Intellectual Property except directly in the Photographer’s interest.
2. work standards
   1. Quality of Products and Services
      1. The Photographer will use reasonable skill and care in providing Services.
      2. Photographs will be delivered to the Client in the image quality advertised on the Photographer’s website.
      3. The Client accepts that any Products printed by the Client personally may not be of the same quality as any Products printed by the Photographer.
   2. Environmental conditions
      1. The Client accepts that the quality of any Services and Products are subject to the surrounding environmental conditions, natural characteristic of a Product which cannot be altered by the Photographer (**Inherent Qualities**) and any abnormal climactic conditions beyond the control of the Photographer (**Inclement Weather**).
      2. The Photographer accepts no liability for any damage to Products or failure to provide Services, as a result of:
         1. the damaging effects of Inclement Weather; and/or
         2. fading or discolouring of Products, suffered as a result of Inherent Qualities or the environmental conditions in which the Client has stored the Products.
   3. Behaviour of the Client and Associated Persons
      1. The Client accepts that the quality of Services the Photographer provides is subject to the behaviour of the Client and Associated Persons.
      2. Where the Photographer has made reasonable attempts to control the Client and any Associated Persons, the Photographer accepts no liability for any loss or damage to Products or a failure to provide Services.
3. limitation of Liability
   * 1. Except to the extent prescribed by law, the Photographer accepts no liability for any Claim, loss or injury arising from the Photographer providing Services to the Client.
     2. No warranty, condition or term applies to this Agreement unless it is set out in this Agreement or is implied by law and cannot be excluded. If a term is implied in to this Agreement by law and cannot lawfully be excluded, then so far as the law allows, the Photographer’s liability for breach of that term is limited to:
        1. if the term relates to Services, re-supplying Services or, at the Photographer discretion, paying for the Services to be re-supplied;
        2. if the term relates to Products, paying for the delivery of the Products to be re-supplied.
     3. If the Photographer is unable to complete a Session due to the illness or injury of the Photographer and the Photographer is unable to secure a replacement person or reschedule the Session, the Photographer’s liability is limited to the return of all payments paid by the Client for the Session, less reimbursement of any reasonable costs and expenses incurred by the Photographer.
     4. The limitation on liability in (b) shall also apply where any Products are damaged in processing, lost through Equipment malfunction, lost in the mail, or otherwise lost or damaged without fault on the Photographer’s part.
4. termination
   * 1. The Photographer may terminate a Session [or Event] where the Photographer determines that the behaviour of the persons involved is such that the Session [or Event] can no longer continue.
     2. The Photographer may terminate a Session if the Products or Services requested by the Client require the Client or any Associated Persons to put themselves in danger of serious physical injury or, in the Photographer’s opinion, of an offensive nature.
     3. Upon termination of the Session [or Event] under this clause, the Photographer will be entitled to recover in full, any Fees due and payable to the Photographer as if the Session [or Event] had not been terminated.
5. delivery and release

The Photographer will deliver any Products to the Client no more than 30 days after the Session in which the Photographs used to create the Products are taken. If, as a result of an accident or the consequence of an event beyond the Photographer’s control, including a failure of the postage delivery service, any Products are lost, damaged, or not delivered to the Client, the Photographer’s liability is limited to the amount paid by the Client for the purchase of the Products for which delivery does not occur. The Photographer warrants that all Products delivered to the Client will be delivered in the form agreed to by the Photographer and the Client.

1. creative expression

The Client acknowledges that the Services and Products provided by the Photographer are of a unique and artistic nature, and may be different to Services and Products provided by persons other than the Photographer. The Client consents to the Photographer using its own creative expression and artistic judgment in providing Products and Services to the Client. Services and Products provided to the Client shall not be subject to rejection due to the Client’s subjective opinion based on aesthetic criteria.

1. occupational health and safety

If at any time the Photographer fears for the safety of persons or Equipment, the Photographer may do all that is reasonably necessary to protect the Photographer’s interests. This includes, but is not limited, to refusing to deliver Products or Services to the Client, postponing a Session to a later date and/or the destruction and removing or altering any Product the Photographer has created for the Client to purchase. In the event that any action is taken in accordance with this clause, no refunds will be granted to the Client.

1. archiving of materials

All Photographs taken in connection with Services provided to the Client will be archived for 3 months and then purged by the Photographer unless otherwise requested. The Photographer provides no guarantee and is not responsible for the removal of Photographs uploaded onto the internet or social networking media.

1. exclusivity at an event [Optional clause]
   * 1. The Client agrees that the Photographer shall be the exclusive photographer retained by the Client for the duration of the Photographer’s engagement with the Client at the Event.
     2. Photographs taken at the Event by persons other than the Photographer are prohibited throughout the duration of the Event. This includes attendees at the Event taking photos on their personal camera or mobile phone devices or engaging a third party to take photos on their behalf or for their personal use.
2. cooling off period for aipp members [optional clause]

If the Photographer is a member of the Australian Institute of Professional Photography, the Client is entitled upon request to a 3 day cooling off period.

1. miscellaneous
   * 1. All Fees will be inclusive of GST.
     2. Except with respect to the terms and conditions, this Agreement:
        1. can only be amended, supplemented, notated or replaced by another document signed by the parties;
        2. embodies the entire agreement between the Client and the Photographer and supersedes all previous agreements, understandings, negotiations, and representations on the subject matter of this Agreement.
     3. If the whole, or any part, of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Agreement has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this Agreement.
     4. This Agreement is governed by the law in force in Queensland, Australia.