

Terms & conditions

I am very much looking forward to working with you!

Please read these Terms and Conditions carefully.

All contracts that the Photographer may enter into shall be governed by these Terms and Conditions. By paying the session fee you are agreeing to these terms and conditions. The Photographer will ask the Client for the Client's express written acceptance of these Terms and Conditions before providing any photographic services to the Client – typically at the time of the shoot.

1. Definitions

1.1 Except to the extent expressly provided otherwise, in these Terms and Conditions:

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**Charges**" means the following:

- (a) as per current pricelist
- (b) amounts as may be agreed in writing by the parties from time to time;
- (c) amounts calculated by multiplying the Photographer's standard time-based charging rates (as notified by the Photographer to the Client before the date of the Contract) by the time spent by the Photographer's personnel performing the Services (rounded down by the Photographer to the nearest quarter hour);

"**Client**" means the person or entity identified as such in Section 1 of the Statement of Work;

"**Client Confidential Information**" means:

- (a) any information disclosed by or on behalf of the Client to the Photographer at any time before the termination of the Contract (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by the Photographer to be confidential;

"**Contract**" means a particular contract made under these Terms and Conditions between the Photographer and the Client;

"**Deliverables**" means photographic services and physical products that the Photographer has agreed to deliver to the Client under these Terms and Conditions;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Photographer**" means Dorte Kjaerulff of Dorte Kjaerulff Photography, a company incorporated in England, having its registered office at *19 Desborough Road, LE16 8PS.* ;

"**Terms and Conditions**" means all the documentation containing the provisions of the Contract, namely the main body of these Terms and Conditions and the Statement of Work, including any amendments to that documentation from time to time;

2. Term

- 2.1 The Contract shall come into force upon payment of the session fee and/or when signing the contract.
- 2.2 The Contract shall continue in force until:

- (a) all the Services have been completed;
 - (b) all the Deliverables and Prints have been delivered; and
 - (c) all the Charges have been paid in cleared funds,
- upon which it will terminate automatically.

2.3 Unless the parties expressly agree otherwise in writing, each subsequent shoot for the same client will under these Terms and Conditions.

3. Services

- 3.1 The Photographer shall provide the Services to the Client in accordance with these Terms and Conditions.
- 3.2 The Photographer shall provide the Services with the reasonable skill and care that is expected in line with the quality of their portfolio.
- 3.3 The Photographer shall devote such of its personnel's time and expertise to the performance of the Services as may be necessary for their satisfactory and timely completion.
- 3.4 The Photographer shall keep the Client informed about the progress of the Services and, in particular, shall promptly provide information about such progress following receipt of a written request from the Client to do so.
- 3.5 The Photographer shall comply with all reasonable requests and directions of the Client in relation to the Services.

4. Deliverables

- 4.1 The Photographer shall deliver the Deliverables to the Client.
- 4.2 The Client must promptly, following receipt of a written request from the Photographer to do so, provide written feedback to the Photographer concerning the Photographer's proposals, plans, designs and/or preparatory materials relating to the Deliverables and made available to the Client with that written request.
- 4.3 The Photographer shall use its best endeavours to ensure that the Deliverables are delivered to the Client in accordance with the timetable set out at the state of the contract.

4.4 The Photographer warrants to the Client that:

- (a) the Deliverables will be of satisfactory quality;
- (b) the Deliverables will be reasonably fit for any particular purpose for which the Client is contracting for the Deliverables that the Client makes known to the Photographer before the Contract is made;
- (c) the Deliverables will match the description of the Deliverables set out in the Statement of Work;
- (d) the Photographer has or will have at the relevant time the right to supply the Deliverables to the Client.
- (e) The photographer does not guarantee any deliverables to be available beyond the duration of the contract.
There will be a fee to pay if the client wish to see their images again at a later time, and there is no guarantee that their images will be available.

5. Acceptance

5.1 Within 5 Business Days following the delivery of Deliverables to the Client, the Client shall:

- (a) review the Deliverables to determine whether they comply with the Acceptance Criteria; and
- (b) notify the Photographer in writing of the results of such review, providing full details of any non-compliance with the Acceptance Criteria.

5.2 If the Client does not give to the Photographer a notice within 5 working days then the Deliverables shall be deemed to meet the Acceptance Criteria.

5.3 If the Deliverables do not comply with the Acceptance Criteria and the Client notifies the Photographer of the non-compliance within 5 working days, the Photographer will have a further reasonable period agreed by the parties (of no less than 5 Business Days and no more than 30 Business Days) to remedy the non-compliance, following which Client will repeat the review.

5.4 If the Deliverables do not meet the Acceptance Criteria at the time of a second (or subsequent) acceptance review, then Photographer shall be deemed in irremediable material breach of the Contract.

5.5 If the Client accepts or is deemed to accept the Deliverables under this Clause, then the Client will have no right to make any claim, unless the Client could not reasonably have been expected to have identified the breach of that provision during the testing or review process.

6. Prints

6.1 The Photographer shall create and deliver the Prints to the Client within the period specified in the Statement of Work.

6.2 The prices for the Prints and delivery costs for the Prints shall be included as part of the Charges payable in respect of the Services.

6.3 Risk in and title to the Prints shall pass from the Photographer to the Client upon the Prints coming into the physical possession of the Client or a person identified by the Client to take possession of the Prints.

6.4 The Photographer warrants to the Client that:

- (a) the Prints will be of satisfactory quality;
- (b) the Prints will be reasonably fit for any particular purpose for which the Client is contracting for the Prints that the Client makes known to the Photographer before the Contract is entered into;

7. Client obligations

7.1 The client must read the session guide provided by the photographer before their shoot and do their best to prepare for their shoot. The Client must provide to the Photographer, or procure for the Photographer, such:

- (a) co-operation, support and advice; and
- (b) information and documentation,

as are reasonably necessary to enable the Photographer to perform its obligations under the Contract.

8. Intellectual Property Rights

The copyright of the photographs remains the property of the photographer. The client is not licensed to resell the photographs or to approve their use for publication by any other

person, company or organization without the written agreement of the photographer. The client shall not breach these regulations by means of downloading, copying in any manner, altering or duplicating without specific permission.

Please note this also means that clients are not permitted to bring photographic equipment into the studio during the session, including mobile phone cameras.

8.1 The Photographer will grant to the Client a licence to use the Deliverables in accordance with the following:

(a) Consumer customers (such as portraits, families and newborn photography) will be granted a license to store, print and display for personal benefit (not in public) the deliverables. They will not be permitted to re-sell the deliverables without written permission from the photographer. Nor will they be able to approve the deliverables for commercial, public or press use outside their personal use without written permission.

They will not be permitted to alter the images in any way.

(b) Business customers (such as self-employed individual purchasing business photography, small business and large corporations) will be granted a license to store, print and display the deliverables for commercial use on behalf of their own business. They will not be permitted to re-sell the deliverables without written permission from the photographer. Nor will they be able to approve the deliverables for commercial, public or press use outside their own business without written permission.

They will not be permitted to alter the images in any way.

9. Moral rights

9.1 The Client hereby acknowledges that the moral right of each author of the Deliverables to be identified as an author in accordance with Sections 77 and 78 of the Copyright, Designs and Patents Act 1988 has been asserted.

9.2 The Photographer acknowledges that, under Section 85 of the Copyright, Designs and Patents Act 1988, if the Deliverables have been commissioned by the Client for private or domestic purposes, the Client has the rights not to have:

(a) copies of the Deliverables issued to the public;

(b) the Deliverables exhibited or shown in public; and

- (c) the Deliverables communicated to the public,
except if agreed by the Client.

10. Charges

- 10.1 The Client shall pay the Charges to the Photographer in accordance with these Terms and Conditions.
- 10.2 If the Charges are based in whole or part upon the time spent by the Photographer performing the Services, the Photographer must obtain the Client's written consent before performing Services that result in any estimate of time-based Charges given to the Client being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Client agrees otherwise in writing, the Client shall not be liable to pay to the Photographer any Charges in respect of Services performed in breach of this Clause.
- 10.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated inclusive of any applicable value added taxes.
- 10.4 The photographer reserves the right to charge for time spent waiting for a client being late for a session. £45 may be charge to a client being more than 15 minutes late and there is no guarantee that I can extend the session beyond originally planned timings.

11. Timesheets

- 11.1 The Photographer must:
 - (a) ensure that the personnel providing Services, the Charges for which will be based in whole or part upon the time spent in the performance of those Services, complete reasonably detailed records of their time spent providing those Services; and
 - (b) retain such records during the Term, and for a period of at least 12 months following the end of the Term.
- 11.2 Within 30 Business Days following receipt of a written request, the Photographer shall supply to the Client copies of such of the timesheets referred to in Clause 11.1 and in the Photographer's possession or control as the Client may specify in that written request.

12. Payments

- 12.1 The Photographer shall issue invoices for the Charges to the Client once the deliverables are ready for delivery.
- 12.2 The Client must pay the Charges to the Photographer within the period issued on the invoice. All orders must be paid in full before delivery.
- 12.3 The Client must pay the Charges bank transfer or cheque (using such payment details as are notified by the Photographer to the Client from time to time).
- 12.4 If the Client does not pay any amount properly due to the Photographer under these Terms and Conditions, the Photographer may:
 - (a) charge the Client interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month);

13. Photographer's confidentiality obligations

- 13.1 The Photographer must:
 - (a) keep the Client Confidential Information strictly confidential;
 - (b) not disclose the Client Confidential Information to any person without the Client's prior written consent, and then only under conditions of confidentiality approved in writing by the Client;
 - (c) use the same degree of care to protect the confidentiality of the Client Confidential Information as the Photographer uses to protect the Photographer's own confidential information of a similar nature, being at least a reasonable degree of care;
 - (d) act in good faith at all times in relation to the Client Confidential Information; and
 - (e) not use any of the Client Confidential Information for any purpose other than the Permitted Purpose.

- 13.2 Notwithstanding Clause 13.1, the Photographer may disclose the Client Confidential Information to the Photographer's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Client Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Client Confidential Information.
- 13.3 This Clause 13 imposes no obligations upon the Photographer with respect to Client Confidential Information that:
- (a) is known to the Photographer before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
 - (b) is or becomes publicly known through no act or default of the Photographer; or
 - (c) is obtained by the Photographer from a third party in circumstances where the Photographer has no reason to believe that there has been a breach of an obligation of confidentiality.
- 13.4 The restrictions in this Clause 13 do not apply to the extent that any Client Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Photographer on any recognised stock exchange.

14. Photographer's publicity obligations

- 14.1 The Photographer must not make any public disclosures relating to the Contract or the subject matter of the Contract (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed.

15. Distance and off-premises contracts: cancellation right

- 15.1 This Clause 15 applies if and only if the Client enters into the Contract with the Photographer as a consumer - that is, as an individual acting wholly or mainly outside the Client's trade, business, craft or profession - where the Contract is a distance contract or off-premises contract within the meaning of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

15.2 The Client may withdraw an offer to enter into the Contract with the Photographer at any time; and the Client may cancel the Contract entered into with the Photographer at any time within the period:

- (a) beginning when the Contract was entered into; and
- (b) ending at the end of 14 days after the day on which the Contract was entered into,

The Client does not have to give any reason for the withdrawal or cancellation. Any session fee paid is none refundable.

15.3 The Client agrees that the Photographer may begin the provision of services before the expiry of the period referred to in Clause 15.2, and the Client acknowledges that, if the Photographer does begin the provision of services before the end of that period, then:

- (a) if the services are fully performed, the Client will lose the right to cancel referred to in Clause 15.2; and
- (b) if the services are partially performed at the time of cancellation, the Client must pay to the Photographer an amount proportional to the services supplied or the Photographer may deduct such amount from any refund due to the Client in accordance with this Clause 15.
- (c) if the cancellation is less than 7 business days before the agreed date of the shoot, an alternative date may be offered, but this is not guaranteed.

15.4 In order to withdraw an offer to enter into the Contract or cancel the Contract on the basis described in this Clause 15, the Client must inform the Photographer of the Client's decision to withdraw or cancel (as the case may be). The Client may inform the Photographer in writing.

15.6 If the cancellation is more than 7 business days before the shoot, the Photographer will refund money using the same method used to make the payment, unless the Client has expressly agreed otherwise.

15.7 The Photographer will process the refund due to the Client as a result of a cancellation on the basis described in this Clause 15 without undue delay and, in any case, within the

period of 30 days after the day on which the Photographer is informed of the cancellation.

16. Warranties

16.1 The Photographer warrants to the Client that:

- (a) the Photographer has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions;
- (b) the Photographer will comply with all applicable legal and regulatory requirements applying to the exercise of the Photographer's rights and the fulfilment of the Photographer's obligations under these Terms and Conditions; and
- (c) the Photographer has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

16.2 The Client warrants to the Photographer that it has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions.

16.3 All of the parties' warranties and representations in respect of the subject matter of the Contract are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Contract will be implied into the Contract or any related contract.

17. Limitation of liability

In the unlikely event of a total photographic failure or cancellation of this contract by either party or in any other circumstance the liability of one party to the other shall be limited to the total value of the contract. Neither party shall be liable for indirect or consequential loss.

17.3 The Photographer will not be liable to the Client in respect of any losses arising out of a Force Majeure Event.

17.4 The Photographer will not be liable to the Client in respect of any loss of profits or anticipated savings.

- 17.5 The Photographer will not be liable to the Client in respect of any loss of revenue or income.
- 17.6 The Photographer will not be liable to the Client in respect of any loss of business, contracts or opportunities.
- 17.7 The Photographer will not be liable to the Client in respect of any loss or corruption of any data, database or software.
- 17.8 The Photographer will not be liable to the Client in respect of any special, indirect or consequential loss or damage.

18. Force Majeure Event

- 18.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Contract (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 18.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Contract, must:
 - (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 18.3 A party whose performance of its obligations under the Contract is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

19. Termination

- 19.1 Either party may terminate the Contract by giving to the other party not less than 5 days' written notice of termination.
- 19.2 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- (a) the other party commits any breach of the Contract, and the breach is not remediable;
- (b) the other party commits a breach of the Contract, and the breach is remediable but the other party fails to remedy the breach within the period of 10 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches the Contract (irrespective of whether such breaches collectively constitute a material breach).

19.3 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract); or
- (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

- 19.4 The Photographer may terminate the Contract immediately by giving written notice to the Client if:
- (a) any amount due to be paid by the Client to the Photographer under the Contract is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
 - (b) the Photographer has given to the Client at least 10 days' written notice, following the failure to pay, of its intention to terminate the Contract in accordance with this Clause 19.4.