

Jim Muller Photography Ltd

Terms of Business

Please read these Terms of Business carefully, as they set out our and your legal rights and obligations in relation to our services.

1. Definitions and interpretation

1.1 In these Terms of Business:

“**Charges**” means the charges specified in the Statement of Work payable by the Customer to the Photographer;

“**Customer**” means the customer for Services under an Engagement as specified in the Statement of Work;

“**Effective Date**” means the date specified as such in the Statement of Work

“**Engagement**” means a contract between the Photographer and the Customer for the supply of Services and the delivery of Photographs incorporating these Terms of Business and a Statement of Work, and any amendments to such a contract from time to time;

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“**Hourly Rate**” means the Photographer's hourly labour rate as specified in the Statement of Work or published on the Photographer's website on the Effective Date

“**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 the “intellectual property rights” referred to above include copyright and related rights, moral rights, database rights, business names, trade names, trade marks, service marks, passing off rights and rights in designs);

“**Permission**” means a permission given by a third party for the performance of the Services and/or the inclusion of a location, object, person, work or other thing in the Photographs;

“**Photographer**” means Jim Muller Photography Ltd, a company incorporated in England and Wales (registration number 07804958) having its registered office at 5 Cartwright Gardens, Aynho, Banbury, Oxfordshire, OX17 3BB

“**Photographs**” means the photographic images detailed in the Statement of Work which are the subject of an Engagement, which may include prints, negatives, transparencies and/or digital images;

“**Services**” means the photographic services supplied by the Photographer to the Customer under an Engagement, details of which are set out in the Statement of Work (or, to the extent that no such details are set out in the Statement of Work, details of which will be agreed between the parties acting reasonably from time to time);

“**Statement of Work**” means the statement of work document issued by the Photographer to the Customer and signed by or on behalf of each party detailing the scope of the Services and other matters relating to an Engagement;^{and}

“**Term**” means the term of an Engagement.

1.2 In these Terms of Business, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of these Terms of Business.

1.4 In these Terms of Business, “persons” include companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

1.5 The ejusdem generis rule is not intended to be used in the interpretation of these Terms of Business.

2. Engagements

Each Engagement will come into force on its Effective Date and will continue in force until the Services agreed in the Statement of Work have been completed, upon which it will terminate automatically (unless previously terminated in accordance with Clause 12).

3. Services

3.1 The Photographer will supply the Services to the Customer and deliver the Photographs to the Customer in accordance with the terms of each Engagement.

3.2 The Photographer may sub-contract the provision of the Services without the prior written consent of the Customer providing that if the Photographer does sub-contract the provision of the Services, the Photographer will remain liable to the Customer for the performance of the sub-contracted obligations.

3.3 The Photographer may suspend the provision of the Services and/or withhold the Photographs if the Customer fails to pay by the due date any amount due to the Photographer in respect of an Engagement.

4. Customer obligations

4.1 The Customer will provide to, or procure for, the Photographer any:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) governmental, legal or regulatory licences, consents or permits;

reasonably necessary to enable the Photographer to discharge its obligations under any Engagement.

4.2 The Customer must provide feedback on preparatory composition or design work promptly, and in any event in accordance with any timetable agreed between the parties.

5. Licence of rights

5.1 Upon the later of:

- (a) the completion of the Services under an Engagement; and
- (b) the payment by the Customer to the Photographer in full in cleared funds of all amounts due in respect of an Engagement,

the Photographer will (and hereby does) grant to the Customer a worldwide, non-exclusive licence to use the photographs made under this agreement subject to the following conditions:

- (a) This license is non-transferable

- (b) the Customer may not sell or directly profit from any image without permission
- (c) with the exception of cropping and re-sizing the Customer may only post un-altered photographs online. The photographer understands and accepts that Social Networking sites may compress or alter images to the detriment of the image and for personal use this is acceptable
- (d) the Customer may share any un-altered image, in any form and in doing so acknowledge copyright and convey the conditions of this license
- (e) the Customer may not substantially alter, manipulate or distort any images without permission

6. Moral rights

- 6.1 The Photographer asserts their moral rights to be identified as the author of the Photographs in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.
- 6.2 the Photographer acknowledges that, under Section 85 of the Copyright, Designs and Patents Act 1988, where Photographs have been commissioned by the Customer for private or domestic purposes, the Customer has the rights not to have: (i) copies of the Photographs shown in public, (ii) the Photographs exhibited or shown in public, and (iii) the Photographs communicated to the public without the permission of the Customer.

7. Intellectual Property Rights

- 7.1 The Photographer warrants that the Photographs will not infringe the Intellectual Property Rights of any third party.
- 7.2 Subject to the Customer's compliance with Clause 7.3, the Photographer hereby indemnifies and undertakes to keep indemnified the Customer against any losses, damages, claims, obligations, liabilities, costs and expenses (including legal fees and costs and expenses incurred in investigating, preparing, defending or prosecuting any litigation, claim, proceeding or demand) arising out of or in connection with any breach by the Photographer of the warranty in Clause 7.1.
- 7.3 The Customer will:
 - (a) upon becoming aware of an actual or potential infringement, notify the Photographer;
 - (b) provide to the Photographer all reasonable assistance in relation to the infringement;
 - (c) allow the Photographer the exclusive conduct of all disputes, proceedings, negotiations and settlements related to the infringement; and
 - (d) not admit liability in connection with the infringement or settle any claim without the prior written consent of the Photographer.

8. Charges and payment

- 8.1 The Customer will pay the Charges to the Photographer in accordance with the provisions of this Clause 8.
- 8.2 The Photographer may issue an invoice for the Charges to the Customer from time to time during the Term, on or after the dates set out in the Statement of Work, or at any time after the relevant Services have been delivered to the Customer.
- 8.3 The Customer will pay the Charges to the Photographer within 14 days of the date of issue of an invoice issued in accordance with Clause 8.2.
- 8.4 Charges must be paid by bank transfer or by cheque (using such payment details as are notified by the Photographer to the Customer from time to time).

- 8.6 If the Customer does not pay any amount properly due to the Photographer in connection with any Engagement, the Photographer may:
- (a) charge the Customer interest on the overdue amount at the rate of 10% per year above the base rate of Bank of England from time to time (which interest will accrue daily until the date of actual payment and be compounded quarterly); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

9. Warranties

- 9.1 The Customer warrants to the Photographer that it has the legal right and authority to enter into and perform its obligations required by each Engagement.
- 9.2 The Photographer warrants to the Customer that:
- (a) it has the legal right and authority to enter into and perform its obligations required by each Engagement; and
 - (b) the Services will be performed with reasonable care and skill.
- 9.3 All of the parties' warranties and representations in respect of the subject matter of the Engagement are expressly set out in these Terms of Business and in the Statement of Work. To the maximum extent permitted by applicable law and subject to Clause [10.1], no other warranties or representations concerning the subject matter of the Engagement will be implied into these Terms of Business, the Statement of Work, the Engagement or any other contract.

10. Limitations and exclusions of liability

- 10.1 Nothing in the Engagement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - (c) limit any liability of a party in any way that is not permitted under applicable law; or
 - (d) exclude any liability of a party that may not be excluded under applicable law,
- and any statutory rights that a party has as a consumer, that cannot be limited or excluded, will not be limited or excluded by the Engagement.
- 10.2 The limitations and exclusions of liability set out in this Clause 10:
- (a) are subject to Clause 10.1;
 - (b) govern all liabilities arising under the Engagement or in relation to the subject matter of the Engagement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
- 10.3 The Photographer will not be liable to the Customer for any losses arising out of a Force Majeure Event.
- 10.4 The Photographer will not be liable to the Customer in respect of any business losses, such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.
- 10.5 Where the Customer is a business customer, the Photographer will not be liable to the Customer in respect of any loss or corruption of any data, database or software.

10.6 Where the Customer is a business customer, the Photographer will not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

11. Distance contracts and consumer rights

11.1 This Clause 11 applies if and only if the Customer agrees to an Engagement:

- (a) as a consumer; and
- (b) using any means of distance communication (including telephone, email and the internet).

11.2 Where this Clause 11 applies, the Customer may cancel an Engagement at any time within 7 working days, beginning on the day after the contract for that Engagement came into force, providing that the Photographer has not begun the provision of the Services during that period.

11.3 If the Customer cancels an Engagement in accordance with this provision, the Customer will receive a full refund of the Charges paid in respect of the Engagement (if any).

11.4 The Photographer will usually refund any money received from the Customer using the same method used by the Customer to pay the Charges. The Photographer will process the refund due to the Customer as soon as possible and, in any case, within 30 days of the day the Photographer received the Customer's valid notice of cancellation. The notice of cancellation should be sent to the Photographer at the address set out in the Statement of Work.

12. Termination

12.1 Either party may terminate an Engagement at any time by giving at least 30 days' written notice to the other party.

12.2 Either party may terminate an Engagement immediately by giving written notice to the other party if the other party:

- (a) commits any material breach of any provision of these Terms of Business or the relevant Statement of Work, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
- [(b) persistently breaches these Terms of Business and/or the relevant Statement of Work.

12.3 Either party may terminate an Engagement immediately by giving written notice 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; or

- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

12.4 The Photographer may terminate an Engagement immediately at any time by giving written notice to the Customer if the Customer fails to pay in full and on time any amount due to the Photographer whether due in respect of that Engagement or otherwise.

13. Effects of termination

13.1 Upon termination of an Engagement all the provisions of these Terms of Business and the Statement of Work will cease to have effect, save that the following provisions of these Terms of Business will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7.2, 7.3, 8.6, 10, 13, and 14.

13.2 Termination of an Engagement will not affect either party's accrued liabilities and rights (including accrued rights to be paid) as at the date of termination.

14. General

14.1 No breach of any term of any Engagement will be waived except with the express written consent of the party not in breach.

14.2 If a term of any Engagement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other terms of the Engagement will continue in effect. If any unlawful and/or unenforceable term would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the term will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant term will be deemed to be deleted).

14.3 No Engagement will constitute a partnership, agency relationship or contract of employment between the parties.

14.4 Neither these Terms of Business nor any Statement of Work may be varied except by a written document signed by or on behalf of each of the parties.

14.5 The Photographer may freely assign its rights and obligations under any Engagement without the Customer's consent – providing where the Customer is a consumer that such action does not serve to reduce the guarantees benefiting the Customer under the Engagement. Save as expressly provided in this Clause or elsewhere in these Terms of Business, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under any Engagement.

14.6 Each Engagement is entered into for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement relating to any Engagement are not subject to the consent of any third party.

14.7 Subject to Clause 10.1:

- (a) these Terms of Business and the relevant Statement of Work will constitute the entire agreement between the parties in relation to an Engagement, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and

- (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into an Engagement.

14.8 These Terms of Business and each Statement of Work will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with any Engagement.