



These Terms and Conditions ("the Terms") shall apply to the services ("the Services") carried out by Quiet Mornings Photography ("the Photographer", "we", or "us") for you ("the Customer" or "you"). The Terms together with the cover sheet containing the specific details of the arrangement shall constitute the contract between you and us ("the Contract").

### **1. Services**

1.1 We shall discuss and agree the Services with you in writing.

1.2 Should you wish to make any changes to the Services, these must be agreed in writing at least fourteen (14) days in advance. Any changes requested within thirty (30) days may not be able to be accommodated. Should any change result in an increase in the Price, we shall inform you of this in writing. There can be no changes to an agreed package that result in a decrease in the Price.

1.3 Subject to any specific reasonable requirements by you, we shall use our judgement when selecting equipment and deciding upon artistic factors such as composition, lighting and photographic and editing style thus we cannot provide any guarantee of specific results.

1.4 The safety of the Photographer is of utmost importance therefore, should the Photographer be placed in a position where they feel unsafe, they shall be entitled to leave the Photo Session.

### **2. Price, Retainer and Payment**

2.1 The Price for the Services shall be as communicated with you on our website ("Price").

2.2 Subject to Clauses 3.4 and 11.3, a non-refundable retainer of £325 shall be payable by you to secure the date and time. ("the Retainer").

2.3 All invoices shall be payable immediately.

### **3. Cancellation and Rescheduling**

3.1 Due to the nature of these sessions, the Customer cannot reschedule the date of the Photo Session.

3.2 If you cancel the Services, we shall be entitled to retain the £325 session fee.

3.3 In the unlikely event of an emergency whereby we can no longer attend the Photo Session, we may cancel the Services at any time and shall refund all sums paid towards the Price, including the Retainer.

#### **4. Digital Photographs**

4.1 We shall deliver the photographs (“the Photographs”) to you in a secure online gallery in high-resolution and web-size JPG files. These shall be made available to you for two (2) months from the first upload (“the Period”).

4.2 You are responsible for downloading the Photographs during the Period.

4.3 Should you fail to download and store the Photographs during the Period, there shall be a cost of £175 to make the secure online gallery available again. Please note, however, that the Photographs may only be retained by us for sixty (60) days following the expiry of the Period. We cannot guarantee the storage of the Photographs indefinitely due to storage limitations.

4.4 RAW files shall not be made available to the Customer.

4.5 The Customer is not permitted to re-edit the Photographs.

#### **5. Photograph Prints and Albums**

5.1 Photograph prints and albums are all made to order therefore any portion of the Price attributable to these shall be non-refundable. An order shall not be placed for printing unless the full Price has been paid.

5.2 Timescales are an estimate and delivery dates cannot be guaranteed. We do not accept any liability to you for any delays in printing or delivery. It is also the Customer’s responsibility to ensure that the correct delivery address is provided.

#### **6. Extras**

6.1 Due to time limitations, we cannot allow any wardrobe changes.

#### **7. Copyright and Licensing**

7.1 Unless otherwise agreed in writing, the copyright and any and all other intellectual property rights in the Photographs shall remain the property of the Photographer. We grant to you a non-exclusive, perpetual, non-transferable, revocable (in the event of a breach of the Contract) licence to enable you to use the Photographs for personal use only. Commercial use of any kind is prohibited without the Photographer’s prior written consent.

7.2 In accepting these Terms, the Customer provides express consent for the Photographer to use the Photographs in any advertising or promotional material.

#### **8. Insurance and Liability**

8.1 We carry public liability insurance and professional indemnity insurance to perform the Services.

8.2 Whilst we shall use all reasonable endeavours to ensure that the Photographs delivered in a digital format are free from viruses and errors, you acknowledge and accept that we cannot guarantee that to be the case and we accept no liability for any loss or damage which may result.

8.3 Except in respect of death or personal injury caused by the Photographer’s negligence and fraud or fraudulent misrepresentation, we shall not be liable for any loss or damage whatsoever and howsoever incurring in connection with their performance of the Services under the Contract.

8.4 In the event that the equipment of the Photographer is lost or damaged due to any actions of the Customer or any guests of the Customer at the Photo Session, the Customer shall be liable for any such loss or damage.

#### **9. Confidentiality and Data Protection**

9.1 “Confidential Information” means information which is disclosed by one Party to the other, whether orally, in writing, or otherwise, in connection with the Services.

9.2 Each Party undertakes that they shall, at all times, keep confidential all Confidential Information of the other Party and not disclose to any third party, unless required by law.

9.3 We have complied with and shall continue to comply with all applicable data protection laws. A copy of the Photographer’s Privacy Notice can be made available upon request.

#### **10. Force Majeure**

10.1 The Photographer shall not be liable for any failure or delay in performing the Services where such results from any cause that is beyond their reasonable control (“Force Majeure”). Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action, epidemic or pandemic, public transport cancellations or weather resulting in unsafe travel and any and all other events which are beyond the control of the Photographer.

10.2 If we cannot perform the Services due to Force Majeure, either Party may terminate the Contract by written notice to the other (email being sufficient) and upon such termination, we shall be entitled to retain from the Price (received or still due) the Retainer plus such costs, expenses and disbursements which we have already or shall incur.

10.3 Notice in writing shall be provided as soon as possible if and when any Force Majeure event occurs and such notice shall include an estimate of how long it is likely to continue and the likely impact on the performance of the Contract.

**11. Term, Termination and Effects of Termination**

11.1 The Contract shall come into force on the date the Retainer has been paid.

11.2 Either Party may immediately terminate the Contract by giving written notice (email being sufficient) to the other Party if:-

(a) any sums due under the Contract have not been paid within seven (7) days of the date of those sums falling due;

(b) the other Party commits any other breach of the Contract and, if capable of remedy, is not remedied within thirty (30) days;

(c) the other Party becomes insolvent (or actions suggest this is likely) or ceases, or threatens to cease, to carry on business.

11.3 Upon termination of the Contract for any reason, any sum owing by the Customer to the Photographer shall become immediately due and payable, but beyond this, neither Party shall have any other liability to the other.

11.4 Where the Customer terminates due to a breach by the Photographer, we shall refund to you the Price, including the Retainer.

**12. Miscellaneous**

12.1 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

12.2 Neither Party may assign, sub-licence or otherwise delegate any of its rights or obligations under the Contract without the prior written consent of the other.

Notwithstanding the aforementioned, we shall be free to sub-contract any obligations under the Contract provided that any and all sub-contractors are skilled to a similar standard and no additional charges are passed to you.

Hester van Dam-Pieters

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Date

12.3 All notices that may be required under the Contract shall be issued by email to such email address as is shared with the other Party at the outset of this arrangement.

12.4 The Contract contains the entire agreement between the Parties and may not be modified except in writing, signed by both Parties. Each Party acknowledges that, in entering into the Contract, it does not rely on any representation, warranty or other provision except as expressly provided in the Contract, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.5 In the event that one or more of the provisions of the Agreement is found to be unlawful, invalid or otherwise unenforceable, those provisions shall be deemed severed from the remainder of the Contract, but the rest shall be valid and enforceable.

**13. Dispute Resolution**

The Parties shall attempt to resolve any dispute arising out of or relating to the Contract through negotiations. If such negotiations do not resolve the matter within sixty (60) days, the Parties will attempt to resolve the dispute in good faith through mediation. Should this not result in a resolution, the Parties shall have all rights available to them under any and all applicable laws.

**14. Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with the laws of Scotland and the Parties agree to the exclusive jurisdiction of the courts of Scotland.

Client

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Date

