

# JOHN DIVERS

## PORTRAIT PHOTOGRAPHY

### General Terms and Conditions

#### 1. DEFINITIONS

- 1.1 When the following words with capital letters are used in these Terms, this is what they will mean:
- 1.1.1 **Booking fee:** is defined in clause 7.3;
  - 1.1.2 **Event outside our control:** is defined in clause 9.2;
  - 1.1.3 **Order:** your order for the Services as set out in writing in the Schedule provided by us;
  - 1.1.4 **Photographs:** the products we create for you as a result of the services, the details of which are set out in the order;
  - 1.1.5 **Schedule:** the form on which your order is made, setting out the specific terms of this agreement.
  - 1.1.6 **Services:** the services that We are providing to you as set out in the Order;
  - 1.1.7 **Terms:** the terms and conditions set out in this document
  - 1.1.8 **We/Our/Us:** the Photographer specified in the schedule.
- 1.2 When we use the words "writing" or "written" in these terms, this will include e-mail unless we say otherwise.

#### 2. OUR CONTRACT WITH YOU

- 2.1 These Terms set out the basis upon which we supply services to you.
- 2.2 Please ensure that you read these terms carefully, and check that the details on the order and in these terms are complete and accurate, before you sign and submit the order. If you think that there is a mistake or require any changes, please contact us to discuss. We will confirm any changes in writing to avoid any confusion between you and us.
- 2.3 When you sign and submit the order to us, this does not mean we have accepted your order for services. Our acceptance of the order will take place as described in clause 2.4. If we are unable to supply you with the services, we will inform you of this in writing and we will not process the order.
- 2.4 These terms will become binding on you and us when we contact you to tell you that we are able to provide you with the services, at which point a contract will come into existence between you and us.
- 2.5 We may assign an order number to the order and inform you of it when we confirm the order. If we choose to assign an order number to your order, please quote the order number in all subsequent correspondence with us relating to the order.

### **3. CHANGES TO ORDER OR TERMS**

- 3.1 We may revise these terms from time to time including due to changes in relevant laws and regulatory requirements.
- 3.2 If we have to revise these terms under clause 3.1, we will give you at least one month's written notice of any changes to these terms before they take effect. You can choose to cancel the contract in accordance with clause 10.
- 3.3 You may make a change to the order for services at any time before the start date for the services by contacting us. However, we do reserve the right to charge you for any reasonable costs we incur in having to implement any such changes. Where a change to the order means a change in the total price of the services, We will notify you of the amended price in writing. You can choose to cancel the order in accordance with clause 10.1 in these circumstances.
- 3.4 If you wish to cancel an order before it has been fulfilled, please see your right to do so in clause 10.

### **4. PROVIDING SERVICES**

- 4.1 We will perform the services for you on the specific date set out in the order for an approximate period of time set out in the order.
- 4.2 Additional retouching, digital manipulation and/or artistic finishes are available as additional services for an additional charge. If you elect to purchase any or all of these additional services then the terms on which you purchase these services will be agreed separately with us.
- 4.3 We will make every effort to complete the services on time. However, there may be delays due to an event outside our control. See clause 9 for our responsibilities when an event outside our control happens.
- 4.4 We may need certain information from you that is necessary for us to provide the services. We will contact you about this. If you do not, after being asked by us, provide us with this information, or you provide us with incomplete or incorrect information, we may make an additional charge of a reasonable sum to cover any extra work that is required.

We will not be liable for any delay or non-performance where you have not provided this information to us after We have asked.

- 4.5 We may have to suspend the services if we have to deal with technical problems, or to make improvements (agreed between you and us in writing) to the services. We will contact you to let you know in advance where this occurs, unless the problem is urgent or an emergency. You do not have to pay for the services while they are suspended under this clause 4.5 but this does not affect your obligation to pay any invoices we have already sent you.
- 4.6 If you do not pay us for the services when you are supposed to as set out in clause 7.3, we may suspend the services with immediate effect until you have paid us the outstanding amounts (except where you dispute an invoice under clause 7.5). We will contact you to tell you this. This does not affect our right to charge you interest under clause 7.4.

4.7 We will own the copyright, design right and all other intellectual property rights in the photographs and any negatives, digital files, drafts, drawings or illustrations we make in connection with the photographs for you.

4.8 As stated in clause 8.3, we only supply the services and photographs for domestic and private use. We grant you a personal, non-exclusive, perpetual, revocable licence to such rights in the photographs for your own personal and private use. You are expressly prohibited from using such rights for any commercial gain.

## 5. **CONSENT TO USE PHOTOGRAPHS**

5.1 We may wish to use some of the Photographs to advertise our services including, without limitation, reproduction in our printed publications, presentations and promotional materials, reproduction on our website or for any other commercial purposes (“**Specified Purposes**”).

5.2 You agree to procure the consent of the individuals in the photographs (including, in the case of minors or dependents, the consent of a parent or guardian) in the event of receiving notification of our intention to use any of the photographs for specified purposes and shall promptly confirm the procurement of such consent in writing.

## 6. **IF THERE IS A PROBLEM WITH THE SERVICES OR PHOTOGRAPHS**

6.1 Owing to reflectance caused by a combination of certain dyes and materials, especially man-made fibres, it is sometimes impossible to record the exact colour of a garment as seen by the human eye. The photographs will provide a pleasing colour balance based on the flesh tones of the subjects but cannot guarantee an exact match to reality.

6.2 In the unlikely event that there is any defect with the services or photographs:

6.2.1 please contact Us and tell Us as soon as reasonably possible;

6.2.2 Please give us a reasonable opportunity to repair or fix any defect; and

6.2.3 We will use every effort to repair or fix the defect as soon as reasonably practicable.

6.3 As a consumer, you have legal rights in relation to services not carried out with reasonable skill and care, or if the materials we use are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

## 7. **PRICE AND PAYMENT**

7.1 The price of the services and the photographs will be set out in our price list in force at the time we confirm your order. Our prices may change at any time, but price changes will not affect orders that we have confirmed with you, and paid for.

7.2 These prices include VAT. However, if the rate of VAT changes between the date of the order and the date of delivery or performance, we will adjust the rate of VAT that you pay, unless you have already paid for the services in full before the change in the rate of VAT takes effect.

7.3 Where we are providing services to you, we will ask you to make an advance payment, the amount of which will be set out in the schedule (the “**Booking Fee**”). Where you have chosen and paid for a collection, the booking fee shall be deducted from the total agreed price specified in the schedule. We will invoice you for the balance of the services pro forma and for the price of the photographs on or any time after the date specified in the schedule. Each invoice will quote the order number, if applicable. You must pay each invoice in cleared funds in accordance with the payment terms specified in the schedule.

7.4 If you do not make any payment due to us by the due date for payment, we may charge interest to you on the overdue amount at the rate of 3% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

7.5 However, if you dispute an invoice in good faith and contact us to let us know promptly after you have received an invoice that you dispute it, clause 7.4 will not apply for the period of the dispute.

## 8. **OUR LIABILITY TO YOU**

8.1 If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of the terms or our negligence. Loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by you and us at the time we entered into this contract.

8.2 If we are providing services in your property, we will make good any damage to your property caused by us in the course of performance. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover in the course of performance by us.

8.3 We only supply the services and photographs for domestic and private use. You agree not to use the services and photographs for any commercial, business or re-sale purpose, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

8.4 We do not exclude or limit in any way our liability for:

8.4.1 Death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;

8.4.2 Fraud or fraudulent misrepresentation;

8.4.3 Breach of the terms implied by section 2 of the supply of Goods and Services Act 1982 (title and quiet possession);

8.4.4 Breach of the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 (description, satisfactory quality, fitness for purpose and samples); and

8.4.5 defective products under the Consumer Protection Act 1987.

## 9. **EVENTS OUTSIDE OUR CONTROL**

- 9.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these terms that is caused by an event outside our control.
- 9.2 An event outside our control means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 9.3 If an event outside our control takes place that affects the performance of our obligations under these terms:
- 9.3.1 We will contact you as soon as reasonably possible to notify you; and
- 9.3.2 Our obligations under these terms will be suspended and the time for performance of our obligations will be extended for the duration of the event outside our control. Where the event outside our control affects our performance of services to you, we will restart the services as soon as reasonably possible after the event outside our control is over.
- 9.4 You may cancel the contract if an Event Outside Our Control takes place and you no longer wish Us to provide the Services. Please see your cancellation rights under clause 10. We will only cancel the contract if the Event Outside Our Control continues for longer than four (4) weeks in accordance with Our cancellation rights in clause 10.

## 10. **YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND**

- 10.1 As the services relate to a leisure activity, namely photography, and will be provided on a specific date the cancellation rights granted to consumers under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 do not apply to you. However, you are entitled to cancel the services in accordance with clauses 10.3 and 10.5.
- 10.2 As the photographs are made to your specifications and will clearly be personalised you will have no right to cancel the supply of the photographs under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
- 10.3 If, before we begin to provide the services, we are affected by an event outside our control or if we change these terms under clause 3.1 to your material disadvantage you may cancel any order for services at any time before the start date for the services by contacting us in writing. We will confirm your cancellation in writing to you.
- 10.4 If you cancel an order under clause 10.3 and you have made any payment in advance (including the booking fee) for services that have not been provided to you, we will refund these amounts and any delivery charges to you.

- 10.5 However, if you cancel an order for services for any other reason other than under clause 10.3, then a cancellation fee shall be payable by you to reflect the reasonable costs we will have incurred in committing to perform the services for you. The cancellation fee will be a percentage of the total price of the services and photographs payable by you, depending on when you inform us of your wish to cancel your order and how near this is to the date for performance of the services. The cancellation fee shall be calculated in accordance with the table below. Booking fees are non-refundable when you cancel under this clause 10.5.

<b>Number of days prior to the date for performance of the Services</b>	<b>Percentage of the total price payable</b>
More than 120 days	0%
Between 61 and 120 days	50%
Between 31 and 60 days	80%
Between 15 and 30 days	90%
Between 8 and 14 days	95%
Between 7 days or less	100%

## 11. **OUR RIGHTS TO CANCEL AND APPLICABLE REFUND**

- 11.1 We may have to cancel an order before the start date for the services, due to an event outside our control or the unavailability of key personnel or key materials without which we cannot provide the services. If this happens:
- 11.1.1 We will promptly contact you to let you know;
  - 11.1.2 If you have made any payment in advance (including the booking fee) for services that have not been provided to you, we will refund these amounts to you.
- 11.2 We may cancel the contract for services at any time with immediate effect by giving you written notice if:
- 11.2.1 You do not pay us when you are supposed to as set out in clause 7.3. This does not affect our right to charge you interest under clause 7.4; or
  - 11.2.2 You break the contract in any other material way and you do not correct or fix the situation within fourteen (14) days of us asking you to in writing.

## 12. **COMPLAINTS POLICY**

- 12.1 You must notify us in writing within twenty one (21) days of receipt of the photographs if you have a complaint regarding an issue which would be obvious within that twenty one (21) day period or otherwise, as soon as possible after the issue giving rise to the complaint has become apparent. You must set out the nature of the complaint in sufficient detail so as to make the nature and reason of your complaint clear to us.

- 12.2 If, upon expiry of the twenty one (21) day period referred to in clause 12.1, we have not received a complaint then any complaint made after that date shall be sent directly to a third party who shall, at their sole discretion, determine whether or not the complaint should be registered within the complaints procedures.
- 12.3 If you are in agreement with us, then the third party may act as mediator to resolve any dispute arising under these terms and its decision in relation to any such dispute shall be final. Using the third party as a mediator does not preclude either party from pursuing other methods of dispute resolution, including the issuing of a claim in a court of law.
13. **HOW WE MAY USE YOUR PERSONAL INFORMATION GDPR**
- 13.1 We will use the personal information you provide to us to:
- 13.1.1 Provide the services;
  - 13.1.2 Process your payment for such services; and
  - 13.1.3 Inform you about similar products or services that we provide, but you may stop receiving these at any time by contacting us. Please see our ["Privacy Policy"](#) for full details.
- 13.2 You agree that we may if required pass your personal information to credit reference agencies and that they may keep a record of any search that they do.
- 13.3 We will not give or sell your personal data to any third party.

14. **OTHER IMPORTANT TERMS**

- 14.1 We may transfer our rights and obligations under these terms to another organisation, and we will always notify you in writing if this happens, but this will not affect your rights or our obligations under these terms.
- 14.2 Any contract formed pursuant to these terms is between you and us. No other person shall have any rights to enforce any of its terms.
- 14.3 Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 14.4 If we fail to insist that you perform any of your obligations under these terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 14.5 These terms are governed by English law. You and we both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.