

CARALEE PHOTOGRAPHY WEDDING PHOTOGRAPHER

TERMS AND CONDITIONS

WHEREAS the Client(s) are desirous in booking the Photographer as the official photographer to undertake their wedding day and whereas the parties hereto are desirous in recording such agreement in writing; and
NOW THEREFORE the parties agree as follows:

1. INTERPRETATION

- 1.1 It is agreed that this contract is entered into between the Photographer and the Client(s) and it is further agreed that the Photographer shall be the sole professional photographer of the day.
- 1.2 These terms constitute the whole agreement between the parties and the due performance of the contract is subject to the terms below. The terms as set out herein will take precedence over any other terms, conditions and/or stipulations contained in any of the Client(s) documentation and any agreement and/or term purporting to vary or novate the terms of this agreement, or any consensual cancellation, shall not be valid unless reduced to writing and signed by the Client(s) and the Photographer.

2. DEFINITIONS

The following words or expressions shall carry the meanings assigned thereto:

- 2.1 "**Contract**" means these standard terms and conditions, together with any and all Annexures, which is to be read together as one contract and will be considered as one document, all of which will have the effect of a legal and binding agreement between the parties. Agreement shall be construed accordingly.
- 2.2 "**Material**" includes but is not limited to all Photographs, albums, coffee table books, prints, transparencies, images, negatives, digital scans, digital files, design, artwork, montages, drawings, engravings and/or any other photographic product or other products comprising or containing reproductions, adaptations or compilations of any form of photographic material, which being literary and/or artistic works, and which has been created by the Photographer.
- 2.3 "**Package**" means the wedding photography package as selected by the Client(s) herein below, which package consists of a specific number of hours which the Photographer will be present at the wedding and the Material which is to be produced, together with any further and additional Material ordered.
- 2.4 "**Photographer**" means the undersigned photographer herein below, their representatives, successors, assigns, agents and affiliates.
- 2.5 "**Photographs**" means any product of photography or of any process analogous to photography.
- 2.6 "**Client(s)**" means the undersigned person(s) herein below, their representatives, successors, assigns, agents and affiliates.

3. PAYMENT TERMS AND BOOKING FEE

- 3.1 Upon acceptance and receipt of the quotation, the payment of a booking fee of 20% of the total quoted fee becomes due and payable immediately. This fee secures the date, time and services of the Photographer and is not refundable or transferable in the event of cancellation, it being **the agreed loss** suffered by the Photographer due to cancellation.
- 3.2 The booking fee cannot be exchanged for other services or products. Should the date for the wedding change and the Photographer is not available to attend the new date, you will forfeit your booking fee.
- 3.3 The outstanding amount becomes due and payable 72 hours **before** the wedding day or/ on presentation of an invoice by the Photographer. Kindly note that all payments made, either by way of an internet / electronic funds transfer, or cash, is to be free of commission and bank charges, failing which these charges are to be carried by the Client(s) and will be added to the final account rendered by the Photographer.
- 3.4 No date will be booked and/or secured unless the booking fee, as is referred to above, has been paid in full.
- 3.5 No part of any order, including photographs, wedding albums and/or any other materials will be delivered until full payment has been effected.

4. CANCELLATION AND CHANGES

- 4.1 The Client may cancel this contract at any time by giving written notice to the Photographer, but in doing so shall forfeit their booking fee paid. In addition hereto, and save for the cancellation being due to death or hospitalisation of the Client(s), the following charges will be due and payable in case of cancellation, it being **the agreed loss** suffered by the Photographer due to such cancellation:
 - 90 days prior to the function : 50% of the outstanding amount.
 - 60 days prior to the function : 80% of the outstanding amount.
 - 30 days prior to the function : 100% of the outstanding amount.

5. FORCE MAJEURE OR ACT OF GOD

- 5.1 The due performance of this contract is subject to alteration or cancellation by either party owing to any cause beyond their control. In such an event the Photographer will not be liable to the Client(s) and/or any further person in respect of any loss and/or damage of whatsoever nature caused by, or arising from any of the following circumstances:
 - 5.1.1 *Force majeure* (Acts of God);
 - 5.1.2 The loss, damage, destruction or theft of any property on the venue;

- 5.1.3 Any act or circumstance, save for gross negligence by the Photographer, causing the loss, damage, destruction, theft and such other related events of photographic material (including camera equipment);
- 5.1.4 Loss or damage resulting from or related to the use of any equipment on the venue, including but not limited to furniture, cutlery and crockery, sound equipment and photographic equipment or technical failure thereof;

6. LIMITATION OF LIABILITY & INDEMNITY

- 6.1 ***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.***
- 6.2 Without detracting from the generality of the above, the Photographer warrants that he takes the utmost care with respect to exposure, transportation, and processing the photographs. However, in the unlikely event that any Materials are damaged in processing, lost through camera or other media malfunction, lost in the mail, or otherwise lost or damaged without fault on the part of the Photographer, or in the event the Photographer fails to perform for any other reason beyond the Photographers control, ***the Photographer's liability is limited*** to the return of all payments received for the event package.
- 6.3 ***The Client(s) indemnifies and holds the Photographer harmless against all liability, claims and expenses, including attorney's fees, arising from Client(s), and/or any third parties use of the Photographer's Material and / or any loss, damage or misuse of any Photographs supplied by the Photographer, granted that there is no fault on the part of the Photographer.***
- 6.4 If there is any failure to capture certain images that you have requested or that were discussed at our planning meeting, such omissions shall not void this agreement nor be a breach of this agreement and will not cause any compensation to be made to the Client(s) and the Photographer shall not be liable for same.
- 6.5 In the unlikely event of the Photographer being unable to attend to the wedding due to any cause beyond the Photographer's control, the Photographer reserves the right to appoint another photographer to attend to your wedding on their behalf to undertake the wedding photography to his / her best ability. If the situation should occur and a suitable replacement is not found, ***responsibility and liability of the Photographer*** is limited to the return of all payments received for the event package.
- 6.6 Re-shoots may be arranged if practicable but the Photographer will not be responsible for any further costs ancillary hereto.

7. PLACING AN ORDER, RECEIPT OF GOODS AND COURIER FEES

- 7.1 The Photographer undertakes to deliver an edited product of the wedding day with specific features as contained and outlined in the package offered by The Photographer as selected by the Client(s).
- 7.2 Any changes to the wedding photos are to be communicated within 2 weeks from receiving the proof material and it is agreed between the parties that The Photographer will be made aware if this is not possible prior to the wedding day.
- 7.3 In the event of any complaint relating to The Photographer's service and/or materials, it is agreed that such complaints must be received in writing within 2 weeks of collection of the products ordered, failing which The Photographer shall be deemed not to be in breach of any of its obligations and it shall be agreed that all materials were received in a satisfactory condition.
- 7.4 The Photographer must be notified in writing of any alterations to orders within one working day of the order being placed. All costs incurred due to alterations to the order made by the Client(s) after this time will be for the Client(s) account and the Client(s) will be held liable therefore.
- 7.5 In accordance with the accepted practises of all professional photographers and photographic laboratories, the return of any technically acceptable photographs and/or prints and/or any other materials, or demands for refund, will not be entertained on principle. No exception can be made to this rule as the Photographer cannot be held responsible for individual tastes or expectations and the judgment, view, execution and layout of the Photographer will be deemed to be correct.
- 7.6 Owing to reflectance caused by a combination of certain dyes and materials, especially synthetic fibres, it is sometimes impossible to record the exact colour of a garment as seen by the human eye. The Photographer will use their skill to produce, to the best of their ability, pleasing prints and to provide a pleasing colour balance based on the flesh tones of the subjects, but cannot guarantee exact colour matches in certain circumstances.
- 7.7 Any courier fees for any products to be so delivered are excluded from the quote and are for the Client(s) account. The courier costs are payable before the products are couriered.
- 7.8 All additional orders, reorders and/or reproductions shall be treated as an extension of this contract and are to be placed in writing failing which no responsibility for error will be accepted.
- 7.9 The Photographer is able to store completed orders for a maximum of two months, and all other material for a maximum of 6 months, after which time any orders not collected may be destroyed. It is the Clients' responsibility to ensure that proper backup's are kept of the material commissioned and received.

8. COPYRIGHT

- 8.1 All Copyright in the Material created and produced pursuant to this agreement vests with and is retained worldwide by the Photographer at all times and nothing contained in this Agreement shall be deemed as a release, transfer, assignment or other disposal of the Photographer's rights in the Material.
- 8.2 No other person, including the Client(s), will enjoy any rights under the Copyright in and to such Material save as may be specifically granted in this Agreement, or subsequent to this agreement in writing by the Photographer.
- 8.3 Without derogating from the generality of the above, the Photographer hereby permits the Client(s) to use the Material for their personal and non-commercial use, and in the following manner only:
 - 8.3.1 To reproduce, print and copy the Material for family and friends; and
 - 8.3.2 To post, blog and/or display the Material on their personal and non-commercial media and social network forums, provided that the Photographer be credited for the use of the Material at all times
- 8.4 Notwithstanding the above, it is expressly agreed that the Client(s) will not acquire any rights under the copyright in and to the Material and that all rights under the copyright in such Material is exclusively reserved to the Photographer. The Client(s) and any third party is not permitted to sell, publishing, reproduce or otherwise provide and/or distribute the Material to any third party without the express written permission of the Photographer and prior written consent for the use of the Photographs for

any purpose other than for the Client(s) personal and non-commercial use must be obtained from the Photographer.

- 8.5 The Photographer further retains the right to claim authorship of the Photographs and to object to any distortion, mutilation or other modification of the Photographs and/or any Material where such action is or would be prejudicial to the honour or reputation of the Photographer.

9. **TRANSFER OF OWNERSHIP**

Ownership in the physical Material and/or Photographs ordered by the Client(s) shall pass to the Client(s) only when all amounts due by the Client(s) to the Photographer have been paid, notwithstanding delivery of any of the aforesaid materials to the Client(s).

10. **DISPLAY**

- 10.1 The Client(s) hereby permit and allow the Photographer to display any images covered by this contract and to generally promote the business by means of advertising, publicity material, websites, exhibitions, competitions, magazine articles, and other such media, providing that the images are used lawfully and without damage to the Client(s).
- 10.2 It is specifically agreed that the Material may be used on Facebook, and / or such other social media forums as is desired, and that the Clients' may be tagged, or otherwise identified, unless otherwise agreed in writing.

11. **ON THE WEDDING DAY**

- 11.1 *Sole Rights:* The Photographer shall be the sole professional Photographer of the day at the venue(s) specified. The Photographer will not be held liable for over exposed photos caused by flash or lighting from other cameras/video cameras.
- 11.2 *Special Requests:* If there is anything uniquely different, or any specific and distinctive request, then such request needs to be brought to the attention of the Photographer in writing one week prior to your wedding date.
- 11.3 *Requested Photographs:* The Photographer will honour all photographs requested and agreed in advance, provided the following factors are met: weather and allocated time permitting, availability and co-operation of the person/s concerned.
- 11.4 *Coverage:* The Photographer will not be held responsible for the lack of coverage caused by the bride, the groom, or wedding party not being on time, or by any obstructed view caused by the Church, Register Office, or Licensed place of wedding restrictions on photography. The Photographer does not undertake to guarantee any specific picture nor incorporate any specific background, location or group arrangement. Where restrictions or limitations are set by any official or person possessing the correct legal authority to do so, the Photographer shall not be held responsible for non-fulfilment of this contract.
- 11.5 *Weather Changes:* Weather permitting, all photographs requested will be taken as agreed. In the event of rain or snow or any form of weather disturbance, the Photographer will make the necessary changes in the photographic session and will not be liable for the lack of coverage caused by any weather disturbance and/or responsible for any disappointment caused due to the weather.
- 11.6 *Overtime Charged:* All over time charged will be computed at a rate of R500 – R1000 per hour, or as otherwise agreed between the Photographer and the Client(s). Should the Photographer feel that most moments have not been covered, the Photographer will discuss this with the Client(s) and will only stay when it has been approved by them or with their consent.
- 11.7 *Meals:* The Client(s) is required to provide meals for the Photographer and one assistant (if applicable) during the time when the dinner is being served to the wedding guests. These may be served in the dining room or at another location in the reception venue. It is requested that the Photographer and assistant be seated in the dining room if at all possible so as to be able to continue photography during the reception. Further arrangements and the practicality of this arrangement will be as discussed between Clients' and the Photographer.
- 11.8 *Accommodation:* Should the venue for the function be more than 100 kilometres (1 hour's drive) from The Photographer's office, suitable accommodation should be provided for the Photographer and an assistant (if applicable). These accommodation charges are excluded from the quote and are for the Clients account.
- 11.9 *Travelling Expenses:* The first 70km are included in the Package choice. Travel charges of R3.00 per kilometre after those 70km's will be charged, toll-gate costs will also be added to the final cost. These travelling charges are excluded from the quote and are for the Clients account. Any further and / or more advanced travel arrangements will be as discussed between Clients and Photographer.

12. **MODEL RELEASE**

- 12.1 The Client(s) hereby grants to the Photographer and its legal representatives and assigns, the irrevocable and unrestricted right to use and publish photographs of the Client(s) or in which the Client(s) may be included, for editorial, trade, advertising and any other purpose and in any manner and medium; to alter the same without restriction; and to copyright the same.
- 12.2 The Client(s) hereby releases the Photographer and its legal representatives and assigns from all claims and liability relating to such photographs.

13. **DOMICILIUM CITANDI ET EXECUTANDI**

The term *domicilium citandi et executandi* connotes the physical address for service and delivery of documents. The Parties accordingly choose as their address (*domicilium*) for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the delivery of any complaint and/or alteration to original order), the addresses as recorded herein below. Either party may by way of notice to the other party change the physical address chosen as its *domicilium citandi et executandi*.

14. **BREACH**

- 14.1 The Client(s) agree and acknowledge that in the event of them breaching any condition contained in this document, then the Photographer shall without prejudice to any other remedies which the Photographer may have in law, be entitled to summarily cancel this contract with the Client(s) without notice to the Client and to re-possess those Materials already delivered to the Client(s); or to claim specific performance of all of the Client's obligations whether or not such obligations would otherwise have fallen due for performance.

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14.2 Furthermore, In the event of the Client(s) breaching any condition contained in this document, the Client(s) consents to the payment of all legal costs, including the payment of collection commission and tracing agent's fees, should the Photographer have to institute legal action against him/her, on the scale as between attorney and client.

15. GENERAL

15.1 The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.

15.2 The parties agree that all goods, services and materials rendered in terms of this Contract, including any reorders, reproductions, overtime charged, additional albums ordered and/or where extra expenses or time has been incurred by the Photographer, or any other incidental costs incurred herein as a result of alterations to the original order by the Client(s), is to be regarded as an extension of this Contract, incorporating these same terms and conditions, therefore not being severable from the contract herein, and shall further become due and payable in terms hereof.

15.3 No allocation of payments can be made to certain products and or services and no part payment and / or set off is permitted herein.

15.4 No relaxation or indulgence granted to the Client(s) by the Photographer, at any time, shall be deemed to be a waiver of any of the Photographer's rights in terms hereof, and such relaxation or indulgence shall not be deemed as a novation of any of the terms and conditions set out herein, or create any estoppels against the Photographer.

15.5 A certificate under the hand of any authorised person of the Photographer as to the existence and the amount of the Client's indebtedness to the Photographer shall be sufficient and satisfactory proof of the correctness thereof for the purpose of summary judgment or any other proceedings against the Client in arbitration and / or mediation.

16. GOVERNING LAW

This agreement and its termination shall be governed by and construed in accordance with the laws of the Republic of South Africa. Both the Photographer and the Client(s) agree that all legal action based on any claim arising under or out of this agreement must be determined in accordance with South African Law and filed and prosecuted in a court of competent jurisdiction located in the Republic of South Africa and each of them hereby consents and irrevocably submits to the jurisdiction of such court in respect of all legal action or proceedings arising out of or in connection with this agreement, its implementation, interpretation and/or termination.

17. JURISDICTION OF MAGISTRATE'S COURT

The Client(s) hereby consents to the jurisdiction of the Magistrate's Court in respect of any action or proceedings which may be brought against him/her by the Photographer in connection with this Contract, notwithstanding that such action or proceedings would otherwise be beyond such jurisdiction without prejudice to the Photographer's right to institute action in the Supreme Court having jurisdiction.

18. VALIDITY OF QUOTATION & COOLING-OFF RIGHT

18.1 This wedding package quotation is valid for 14 (fourteen) days only and the services on this offer will be reserved subject to payment of the deposit as stated in clause 2 above.

18.2 Should This contract have been entered into as a result of direct marketing as defined in the Consumer protection act 2008, then the Client(s) attention is drawn to the rights inferred upon them in terms of section 16(3) of the Consumer Protection Act, in terms of which the Client(s) may terminate this agreement, without reason or penalty, by written notice to the Photographer after a 5 (five) day period after signature hereof, and to have any amount already paid by them in terms hereof refunded in the event of such termination.

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19. ACCEPTANCE AND ACKNOWLEDGEMENT

The Client(s) hereby accepts the quotation from The Photographer to render and supply all services and materials as agreed upon on these terms and conditions as stated herein. The Client(s) by signing this contract acknowledges that they have read and understood the terms and conditions and agrees to all of the above and is further familiar with all details of the selected wedding package.

SIGNED AT _____ ON THIS _____ DAY OF _____ 2011

Photographer: Cara Lee Mc Laughlin

Photographer's Address: 28 Harries Street, Plumstead
(Chosen domicilium) Cape Town, South Africa 7800

Contact Details: Cell Phone: 074 129 7626 Email: cara@caraleephotography.co.za

Client's Full Names: Groom: _____ Bride: _____

Clients' Address: _____
(Chosen domicilium) _____

Contact Details: Cell Phone: _____ Email: _____

How many people are attending the wedding: _____

Wedding Date: _____

Wedding Venue(s): Service: _____

Bride's Preparation Address: Reception: _____

Chosen Wedding Package: _____

Wedding Package Quote: _____

Client's Signature: Groom: _____ Bride: _____

