



## Terms & Conditions of Service of Matt Garcia Photography

### 1. Definitions

- (a) "Matt Garcia Photography" means a trading style of Matt Garcia
- (b) "Services and Goods" means any photographic services and/or goods (including electronic digital data images) supplied by Matt Garcia Photography.
- (c) "The Client" means the party buying Services and Goods from Matt Garcia Photography.
- (d) "Contract" means any contract between Matt Garcia Photography and The Client for the supply of Services and Goods.
- (e) "Digital Files" means any digital files, flashcards, disks, compact disks, CD ROM, DVD electronic mail communications, internet websites or other electronic means of storing digital data images

### 2. Formation of Contract; exclusion of other terms

- (a) The Client's written or verbal confirmation that it wishes Matt Garcia Photography to supply the Services and Goods will result in the formation of a binding Contract on these terms.
- (b) Unless otherwise agreed in writing by Matt Garcia Photography, all Contracts will be on these terms to the exclusion of all other terms, including any proposed by The Client.

### 3. Fees; charges for expenses; cancellation

- (a) Any fee quoted by Matt Garcia Photography is exclusive of value added tax. The Client will pay value added tax at the applicable rate in addition to the fee.
- (b) Unless otherwise stated at the time of quotation, any fee quoted by Matt Garcia Photography is exclusive of Matt Garcia Photography's charge for expenses incurred in supplying the Services and Goods. The Client will pay such charge in addition to the fee. Such expenses may include, but will not be limited to, traveling, raw materials, post-production, delivery, accommodation and subsistence.
- (c) Matt Garcia Photography may quote fees as an hourly or daily rate or as a rate specific to the Contract in question. Any fee quoted by Matt Garcia Photography as a daily rate is on the basis of an eight-hour day.
- (d) Matt Garcia Photography reserves the right to exceed any fee quoted if either:
  - (i) Matt Garcia Photography agrees to supply the Services and Goods on a different date or at a different time than originally agreed with The Client; or
  - (ii) any additional Services and Goods or variations to the Services and Goods are required by The Client of which Matt Garcia Photography was not aware when the fee was quoted.
- (e) If The Client cancels a Contract:
  - (i) more than four weeks before Matt Garcia Photography was due to begin supplying the Services and Goods, The Client will, at the discretion of Matt Garcia Photography, pay fifty per cent of the fee quoted, plus value added tax; or
  - (ii) less than four weeks, but more than one week before Matt Garcia Photography was due to begin supplying the Services and Goods, The Client will, at the discretion of Matt Garcia Photography, pay seventy-five per cent of the fee quoted, plus value added tax; or

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# MATT GARCIA PHOTOGRAPHY

(iii) less than one week before Matt Garcia Photography was due to begin supplying the Services and Goods, The Client will, at the discretion of Matt Garcia Photography, pay one hundred per cent of the fee quoted, plus value added tax.

In each case, The Client will also pay Matt Garcia Photography's charge for any expenses relating to the Contract incurred before the date of cancellation.

#### 4. Deadlines

Matt Garcia Photography will use their reasonable endeavours to meet any deadlines agreed with The Client for the supply of the Services and Goods, but time shall not be of the essence. Consequently, The Client will not be entitled to terminate the Contract or treat it as discharged if Matt Garcia Photography fails to meet a deadline agreed with The Client.

#### 5. Payment; acceptance

(a) Unless otherwise stated, The Client will settle Matt Garcia Photography's invoices within thirty days of the date of the invoice. Once settled all payments are non-refundable.

(b) If payment is not received by Matt Garcia Photography in full by the due date, Matt Garcia Photography may, without prejudice to any other rights Matt Garcia Photography may have:

(i) charge interest on the outstanding amount at the rate of three per cent above the base rate from time to time of National Westminster Bank plc (both before and after judgment); and/or

(ii) suspend their work under any other Contract.

(c) The Client will be deemed to have accepted the Services and Goods and the related invoice, unless The Client notifies Matt Garcia Photography in writing within seven days of the date of the invoice.

#### 6. Copyright; ownership

(a) All copyright arising in any photographic works produced by Matt Garcia Photography, including copyright in any photographic works comprised of digital data images, will always be owned by Matt Garcia Photography. Subject to The Client paying Matt Garcia Photography's fees and any other charges and complying fully with the terms of the Contract, ownership of all prints and Digital Files (but not ownership of the copyright in the photographic works or of any negatives or transparencies) will pass to The Client on delivery and Matt Garcia Photography will grant The Client a licence to use, reproduce and publish copyright works produced by Matt Garcia Photography for The Client under the Contract in such a manner and for such purposes as The Client and Matt Garcia Photography have agreed. In the absence of such agreement, The Client shall not use, reproduce or publish the copyright works, copies of the prints or any Digital Files without the prior written permission of Matt Garcia Photography, neither shall The Client send or transfer the copyright works, copies of the prints or any Digital Files to others or permit others to use, reproduce or publish them. Ownership of all negatives and transparencies will always remain with Matt Garcia Photography.

(b) The Client acknowledges Matt Garcia Photography's right (as the owner of the copyright in all copyright works produced by Matt Garcia Photography for The Client under the Contract) to use, reproduce, sell and publish all such copyright works for the purposes of their own portfolio or for other promotional or commercial purposes.

#### 7. Limitation of liability

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- (a) Matt Garcia Photography will use all reasonable skill and care in supplying the Services and Goods.
- (b) In respect of Services and Goods provided to The Client electronically, Matt Garcia Photography shall have no liability arising out of:
- (i) the colour accuracy of electronic digital data images downloaded or reproduced from digital files; The Client shall be responsible for checking and approving of the quality of all digital data images/ photographs provided by Matt Garcia Photography prior to printing;
  - (ii) corruption, distortion, partial or total loss of electronic digital data images from digital files provided by Matt Garcia Photography; The Client recognises and understands that according to the current status of technological development, error-free use of hardware, software and other user interfaces cannot be guaranteed;
  - (iii) degeneration of stored electronic digital data image quality, partial loss of stored electronic digital data image quality or total loss of electronic digital data images stored on digital files;
  - (iv) electronic computer viruses introduced to The Client's hardware, software or other user interfaces by digital files provided by Matt Garcia Photography; The Client shall be responsible for ensuring that no electronic computer virus is transmitted to any computer, hardware, software, website, network or other user interface and Matt Garcia Photography shall have no liability whatsoever.
- (c) Subject to 7(e) below, Matt Garcia Photography will not be liable for any consequential, indirect or economic loss (including, without limitation, loss of profits, opportunity or bargain), whether arising from breach of the Contract, any tortuous act or omission (including, without limitation, negligence) or breach of any statutory duty.
- (d) Subject to 7(e) below, the liability of Matt Garcia Photography for any direct loss, whether arising from breach of the Contract, any tortuous act or omission (including, without limitation, negligence) or breach of any statutory duty shall be limited to Matt Garcia Photography's fee for the Services and Goods in relation to which such loss arises; Matt Garcia Photography shall have no liability to re-shoot or otherwise provide any further Services and Goods.
- (e) Nothing in these terms shall exclude, limit or be deemed to exclude or limit Matt Garcia Photography's liability for death or personal injury caused by their negligence or the negligence of those for whom Matt Garcia Photography is responsible.
- (f) All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Except in the case of death or personal injury caused by Matt Garcia Photography's negligence, or the negligence of those for whom Matt Garcia Photography is responsible, Matt Garcia Photography will not be liable to the Customer by reason of any representation, implied warranty, condition or other term, any duty or common law under the express terms of the contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether caused by Matt Garcia Photography's negligence or otherwise) which arises out of, or in connection with the Goods or Services.

The terms and provisions of their contract are in addition to all Matt Garcia Photography's rights of general law, none of which shall be limited, in any way whatsoever. Failure, on Matt Garcia Photography's part, to exercise, or any delay in exercising, any of Matt Garcia Photography's rights shall not be deemed to be a variation of their or any subsequent contract, nor shall they adversely affects those rights in any way whatsoever.

If any provision of their agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provisions shall not affect the other provisions of their agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties thereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves, to the greatest extent possible, the economic, legal and commercial objectives of the invalid or unenforceable provision.

## 8. Permissions, consents and authorisations

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(a) The Client confirms and undertakes to Matt Garcia Photography that The Client has obtained all permissions, consents and authorisations necessary for Matt Garcia Photography to supply the Services and Goods, including, without limitation:

(i) consent to be photographed from all models, guests or other individuals whom Matt Garcia Photography may photograph;

(ii) permission to take photographs of or at the relevant venue; and

(iii) authorisation to photograph and reproduce any copyright works, design right works and trademarks which Matt Garcia Photography may photograph.

(b) The Client thereby undertakes to indemnify and keep indemnified Matt Garcia Photography against all claims, actions, losses, damages, costs and expenses (including, without limitation, reasonable legal costs and expenses) suffered or incurred by Matt Garcia Photography as a result of any breach by The Client of 8(a) above.

#### **9. Force Majeure**

(a) Matt Garcia Photography will be released from their obligations under the Contract to the extent that their performance thereof is delayed, hindered or prevented by circumstances which are not within their reasonable control, including, without limitation, acts or restraints of governments or public authorities, riot or civil commotion, strikes, failure of supplies of power, fuel, transport, equipment or other goods or services, vandalism or criminal damage and explosion, fire, flood or natural disaster, or their ability to effectively attend at a shoot or process photographs by reason of illness or mental or physical incapacity, whether of themselves or their representatives.

(b) Without limiting 9(a) above, Matt Garcia Photography will use all reasonable skill and care in selecting reputable photographic laboratories to process and store negatives, transparencies and prints and in storing, negatives, transparencies and prints but Matt Garcia Photography shall not be liable for any damage or loss resulting from circumstances which are not within their control, whether or not referred to in Clause 9(a) above.

(c) Without limiting 9(a) above, Matt Garcia Photography will use all reasonable skill and care in selecting reputable digital storage devices to store digital negatives but Matt Garcia Photography shall not be liable for any damage or loss resulting from circumstances which are not within their control, whether or not referred to in Clause 9(a) above.

#### **10. Delivery**

Matt Garcia Photography will deliver the digital images, finished pictures or negatives to such premises within the United Kingdom as The Client specifies. Risk in the pictures passes on arrival at those premises. If The Client collects the Goods, risk passes on them passing out of Matt Garcia Photography's control. Matt Garcia Photography selects the method of delivery.

#### **11. Governing law**

The Contract will be governed by the laws of England and Wales. The Client and Matt Garcia Photography irrevocably submit to the jurisdiction of the Courts of England and Wales.

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I understand and accept the above terms and conditions.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Organisation \_\_\_\_\_

Address \_\_\_\_\_

Tel \_\_\_\_\_

Date \_\_\_\_\_

Please post completed document to Matt Garcia Photography, PO Box 40042, London N6 5WX.

For all queries please call +44 (0)845 226 2212. For more information please visit [mattgarcia.com](http://mattgarcia.com)

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