



MARTIN CLARK  
PHOTOGRAPHY

## Terms & Conditions

In the following Terms and Conditions:

**“Business”** shall mean Martin Clark Photography

**“Client(s)”** shall mean “You” the Parties to the Contract;

**“Event”** shall mean the Event title inserted into the Contract;

**“Photographer(s)”** shall mean Martin Clark Photography

**“Products”** shall mean any prints, albums or other items listed in the Contract;

**“Services”** shall mean photography to be carried out at the Event and any other Services agreed between the Client(s) and the Photographer and set out in the Contract;

It is agreed that the following terms and the Contract set out the entire agreement made between the parties, and that no variation or modification of the contract shall be effective unless agreed by both parties in writing. Each party acknowledges that, in entering into the contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract and these Terms & Conditions.

### Booking Fee

The Photographer(s) will confirm the Event, Date, Time, Services upon receipt of cleared funds in respect of the Booking Fee.

The Parties acknowledge that the Booking Fee is non-refundable or transferable in the event of cancellation by the Client.

### Payments

Martin Clark Photography will be in contact with you approximately [2-3] weeks prior to your Event to arrange a pre-event appointment, if this is deemed necessary. Any remaining balance is to be paid by that meeting date.

All payments must be received in cleared funds prior to the Event.

Following payment of the Booking Fee, the balance of fees due is to be paid as follows:

- For package offers – booking fee is deducted from the published package cost. By signing the client agreement prior to the photoshoot the client agrees to pay the full price of the lowest package cost at minimum. Remaining balance to be paid 48 hours after the event
- Payment for any additional images or products must be made at the time of order.



**SUITE 18** AYRSHIRE'S ARTS ACADEMY, 15 ELM BANK DRIVE, KILMARNOCK KA1 3AE

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- Headshots – Balance must be paid prior to the photoshoot

Failure to make payment by the dates stipulated may result in cancellation.

All cheques should be made payable to Martin Clark. Bank Transfer (BACS) payments are accepted by prior arrangement.

Late payments or returned cheques will attract an administration charge of £10.00.

No photographs or albums will be delivered until all payments have been received in full in cleared funds.

Where payment is to be made by a third party, the Parties acknowledge that they shall remain responsible for any balance outstanding in respect of the Contract.

### **License and Coverage:**

The Photographer(s) shall be granted artistic license in relation to the poses photographed and the locations used. Although every effort will be made to comply with the Clients' requirements, the Photographers' judgement regarding the location, poses and number of photographs taken shall be deemed correct and not subject to dispute.

Whilst the Photographer(s) shall endeavour to fulfil the Clients' requirements, the Photographer(s) cannot be held responsible for non-availability of subjects or adverse conditions which may delay the progress of proceedings, preventing the coverage of certain specified shots.

Any alterations made to this Contract by the Clients once details have been confirmed may only be made at the discretion of the Photographer(s) and should be agreed in writing. Where the Photographer(s) is unable to accommodate alternative arrangements (such as change of event date and or venue) the Photographer(s) are not liable to compensate the Client(s) in any way whatsoever.

### **Use and Display of Images**

The Clients hereby allow the Photographer(s) to display any images relating to the Contract and to generally promote the Business in the Photographer(s) portfolio and 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). By signing this contract you consent to the use of such images. Images placed in password protected galleries within the website are not available to the general public in the normal course of events. Other than via the password protected gallery the photographer(s) agree not to resell any image to a third party other than with prior written consent.

### **Image and Reproduction**

All print and presentation sizes quoted are approximate and subject to change at the discretion of the Photographer(s) and may be subject to slight variation. Whilst every effort will be made, the Photographer(s) cannot guarantee exact colour matching and is not held responsible for any colour variations which may occur due to light and location variations.

Due to limitations of computer monitors and variations of computer operating systems, it is understood that images viewed via this method may appear differently according to the specification of each monitor/computer and that prints may not match images rendered on any particular computer monitor.



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Where images are made available for use on a USB memory drive, reasonable steps are taken to ensure compatibility, but you acknowledge that USB memory drives may not play on all computers, portable devices or smart TV's.

Only quality branded USB drives are used and each is checked prior to delivery. However, it remains the responsibility of the Clients to check for in-transit damage. The Photographer(s) cannot be held responsible for damage to equipment resulting from defective media.

## Retouching

Retouching, digital manipulation and artist finishing is available to the Client as an optional extra.

## Reorders

All reorders shall be treated as an extension of the Contract and no responsibility for any error will be accepted unless orders are provided in writing.

## Products

In the event a product (such as an album) is no longer available a suitable alternative of similar quality will be offered. The photographers' choice of an alternative will be deemed as correct and acceptable to the Client(s). Any surcharge resulting from the order of a new product following rejection of a replacement will be the responsibility of the Client(s).

## Ownership

Any negatives and/or digital files shall remain the sole property of the Photographer(s) at all times.

All completed albums and products shall remain the property of the Photographer(s) until full payment is received.

## Copyright

Any images or copies of images whether stored digitally or otherwise and any computer program including any source or object code, computer files or printed documentation relating to such images are protected by the Copyright and Design Act 1988 and remain the copyright of The Photographer(s) at all times unless there is express written agreement to the contrary. It is contrary to the Act to copy or allow to be copied photographically, electronically or by any other means an image created as part of this contract without the written permission of the Photographer(s).

## Substitution

In the unlikely event that the assigned Photographer is unable to attend your Event due to unforeseen circumstances, Martin Clark Photography reserves the right to appoint another suitable Photographer(s) to attend the Event on his behalf to undertake the photography to his/her best ability.



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## Insurance & Limitation of Liability

The Photographer(s) will maintain Public Liability and Professional Indemnity insurance at all times. However, 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 any indirect or consequential loss.

## Force Majeure

The due performance of this contract is subject to alteration or cancellation due to a Force Majeure Event. A **Force Majeure Event** means an event beyond the control of a party, which by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources. For the avoidance of doubt, it does not include circumstances where the Photographer(s) attend an Event to perform the Services and any of the Parties fail to attend.

## Cancellation

Where the Photographer(s) has to cancel the Event, due to circumstances beyond his/her control the full amount of the Booking Fee and any further payments received will be returned to the Client(s).

Where it is possible a re-shoot may be arranged (if practicable) however, the Photographer(s) will not be responsible or liable for any additional costs incurred by the Client(s).

Should the Client wish to cancel this contract at any time, Notice of Cancellation must be given in writing to the Photographer (s). In such circumstances, the Client will be liable to pay the Photographer(s) the following sums-

- Notice received 30 days prior to the event date or more: Booking Fee only.
- Notice received less than 30 days but more than 7 days: 50% of the agreed balance due will be payable.
- Notice received of 7 days or less: 100% of the agreed balance will be payable.

Where no package has been selected on the original booking form, the agreed balance will be accepted as being £99 and the date of cancellation will be deemed to be the date the Photographer(s) receives written Notice of Cancellation, as confirmed by the Photographer.

Where an Event is postponed until a later date, the postponement will be treated as a cancellation in accordance with the above payment structure. If the photographer can accommodate the date a 50% allowance of the amount due will be transferred to that new date and a new contract will be commenced.

## VAT

Martin Clark Photography is not V.A.T. registered and all prices are quoted as NETT.



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## Complaints

All complaints should be raised by the Client directly to the Photographer in writing within 14 days of the occurrence which gives rise to the complaint. The Photographer will consider the complaint and shall provide a response to the Client within 14 days of receipt of the Complaint. In the unlikely event of an unresolved complaint the Client may request the Guild of Photographers to mediate but only on the basis that its decision shall be final and binding upon both parties.

## Notices

Any Notice relating to this contract should be in writing and sent by recorded delivery to the address stated in the Contract.

## Governing law and jurisdiction

The parties irrevocably agree any dispute arising out of this contract shall be governed and construed in accordance with Scottish Law and that the court of Scotland shall have exclusive jurisdiction to settle any dispute or claim.



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