



## Terms and Conditions for the Supply of Services

### **Newborn Photography**

The following Terms and Conditions (**the Terms**) are the Contract of Services between Amy Newton trading as Cherished Memories Photography, with the email address:

enquiries@cherishedmemoriesphotography.co.uk (**We, Us, the Business**) and the Bride and Groom (**You, the Client**) collectively, (**the Parties**).

These Terms and Conditions are incorporated into the Contract and contain important information about your legal rights.

By purchasing the Services, You accept and agree to be bound by the Terms.

These Terms supersede any previously issued terms, understandings and arrangements, whether in writing or oral in respect of its subject matter.

Each party acknowledges that it has not entered into the Contract/Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract/Agreement or any documents entered into pursuant to it.

### **1. DEFINITIONS** - In these Terms the following definitions apply:

<b>Booking Fee</b>	means the initial 20% deposit of the Price.
<b>Client</b>	means any person who uses the Services from the Business.
<b>Contract/Agreement</b>	means the agreement between the Business and the Client for the supply and purchase of Services incorporating these Terms.
<b>Data Protection Laws</b>	means, as binding on either party or the Services: <ul style="list-style-type: none"><li>● the GDPR;</li><li>● the Data Protection Act 2018; and</li><li>● any laws that enact, replace, extend, re-enact, consolidate or amend any of the foregoing.</li></ul>
<b>Date</b>	means the date on which the photo shoot will take place.
<b>Force Majeure</b>	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, but excluding the Client's inability to pay or circumstances resulting in the Client's inability to pay.
<b>Intellectual Property Rights</b>	means all intellectual and industrial property rights, including without limitation, patents, rights in know-how, trademarks, registered designs, model unregistered design rights, unregistered trademarks and copyright (whether in drawings, plans specification, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and

	applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world.
<b>Location</b>	Place of photo shoot specified in separate schedule contract agreement.
<b>Meeting</b>	means the consultation meeting that the Client and Photographer will have prior to photo shoot if the Client wishes to meet beforehand.
<b>Order and Order Acknowledgement</b>	means the Client will place the Order as an offer in the formation of a contract and the Business will supply an Order Acknowledgement as the acceptance.
<b>Package</b>	means the photography package chosen.
<b>Payment</b>	means the required methods and timing of payments by the Client to the Business as specified in Clause 5 below.
<b>Photographer</b>	means Amy Newton and / or the appointment of another photographer by Amy Newton.
<b>Price</b>	means the amount payable.
<b>Products</b>	means the products that the Photographer provides including photographs, albums, prints and canvases.
<b>Services</b>	means the services that the Business supplies.
<b>Time</b>	means the time specified by client in separate schedule contract agreement.
<b>Registered Address</b>	means the Photographers registered address.
<b>Schedule 1</b>	means a separate contract form the Client will need to complete.
<b>Schedule 2</b>	means a separate contract form the Client will need to complete.

## 2. APPLICATION

- 2.1 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing by Us.
- 2.2 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.
- 2.3 Where the phrase 'in writing' is used in this Agreement, it shall be understood as including emails.

## 3. BOOKING FEE

- 3.1 Upon receipt of the Order Acknowledgment, the Client shall pay the Booking Fee.
- 3.2 Payment of the Booking Fee is:
  - 3.2.1 The Client's acceptance of these Conditions; and
  - 3.2.2 Guarantees the Date.
- 3.3 The Booking Fee is non-refundable or transferable in the event of cancellation by the Client.

## 4. CONSULTATION

- 4.1 If the Client wishes to meet beforehand, the parties will have a Meeting.
- 4.2 The date, time and location of the Meeting will be agreed between the parties.
- 4.3 During the Meeting the Client will provide information specified in Schedule 1 and 2.
- 4.4 In the event that the Client wants to make any changes to Schedule 1 or 2, they must inform Us in writing at least 2 weeks before the photo shoot.

## 5. PAYMENT

- 5.1 Following payment of the Booking Fee, the balance of the Price is to be paid by midnight before the date of the photo session.
- 5.2 Payment for any additional images or Products must be made at the time of Order.
- 5.3 Bank Transfer (BACS) payments are acceptable too to the Bank Account specified in Schedule 1.
- 5.4 No Products will be delivered until all payments have been received in full.
- 5.5 Where payment is to be made by a third party, the Client acknowledges that they shall remain responsible for any balance outstanding in respect of the Contract.

**5.6** Failure to make payment by the dates stipulated may result in cancellation. Late payments will attract an administration charge of £50.

**5.7** Where any sums due under this Contract are not paid in full by the due date, We may:

5.7.1 charge interest, without limiting our other rights;

5.7.2 interest shall accrue on a daily basis and apply from the due date for Payment until actual Payment in full, whether before or after judgment.

## **6. PRIVACY AND PERMISSIONS**

**6.1** We agree to respect Your privacy and take all reasonable steps to comply with the requirements of the EU General Data Protection Regulations (GDPR).

**6.2** When We take photographs, We are entitled to assume that all persons attending the photo shoot are happy to have their photograph taken.

**6.3** We may use photographs for promotional purposes with images appearing on our website, emails, social media, in Our printed materials produced for promotional purposes including leaflets, posters and in any materials sent out to prospective customers. If You would like further information or to tell Us that You do not consent to images being used in the above ways, please contact Us.

**6.4** The Photographer may take behind the scene shots on the day of the photo shoot. You, the Client, agree that you are happy for the Photographer to do this on the day.

## **7. LICENCE AND COVERAGE**

**7.1** The Photographer is granted artistic licence in relation to the poses photographed and the locations used. Although every effort will be made to comply with the Client's requests, the Photographer's judgement regarding the location, poses and number of photographs taken shall be deemed correct and not subject to dispute.

**7.2** Whilst the Photographer shall endeavour to fulfil the Client's requests, the Photographer cannot be held responsible for non-availability of subjects, attendees/subjects co-operation or adverse weather conditions that may delay or render impossible the progress of proceedings thus preventing the coverage of some shots and as such the Photographer cannot guarantee any specific picture, background or group arrangement.

**7.3** It is the responsibility of the Client to ensure the Photographer is provided with their requirements for certain photographs that they would like in advance of the photo shoot eg particular group shots. The Photographer is not responsible for any specific missing photographs that are not specified in Schedule 2.

**7.4** The Client will be asked to choose 3 props/backdrop styles they wish to use on the day based on the styles shared already via social media and on the Photographers website.

## **8. COOPERATION**

**8.1** The Client is responsible for the co-operation of all persons involved with the Photo Shoot. Any time taken for the client to attempt to gain co-operation from any person involved (including settling of your baby), will come off the overall photography time booked in. If extra time is needed, the Photographer may be able to offer extra time at an additional cost however cannot guarantee this due to other shoots being booked in straight after. Therefore the Photographer will recommend the photography time required based on the type of photoshoot booked in and cannot be held responsible if the chosen time booked in by the Client is not suitable on the day. The Photographer has to be strict with time slots to avoid late attendance of next photo shoot. The Photographer will ask the Client a suitable time when the baby is likely to be more settled. If the baby does not settle within an hour, the Photographer may suggest coming back on a different day but the time spent at the Clients home will come off the rescheduled photo shoot.

**8.2** The Client is liable for the cost to repair/replace any equipment or Props damaged by any person during the Photo Shoot including baby. The cost will be calculated by the Photographer.

## **9. IMAGE AND REPRODUCTION**

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

**9.2** 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.

**9.3** We will:

9.3.1 store the RAW files for 3 months after the Photo Shoot.

9.3.2 provide You with JPEG files on a USB pendrive (up to 25 depending on co-operation of persons involved) – if the Client would like more than 25 photographs, there will be an additional charge to this)

9.3.3 store JPEG files for as long as We deem is necessary.

**9.4** Where images are made available for use on a USB, reasonable steps are taken to ensure compatibility, but you acknowledge that USBs may not play on all devices including and not exclusive to computers.

**9.5** Only quality branded USBs are used and each is checked prior to delivery. However, it remains the responsibility of the Client to check for in-transit damage. The Photographer cannot be held responsible for damage to equipment resulting from defective media.

**9.6** The Photographer will NOT provide the Client with any unedited, RAW photographs. In order to get the specific high quality shots that the Photographer will provide the Client with, it might take a few photo captures to get this due to angle experimentation, lighting changes or moving subject. The Photographer wishes to maintain a high quality and level of professionalism and reputation, therefore this would not be an option to the Client under any circumstances.

**9.7** It is not guaranteed that 'sneak peek' shots will be provided to the Client, due to Photographer workload. The Photographer will do their best to provide up to 3 photographs before the 3 week deadline however cannot guarantee this and so this is to be respected by and acceptable to the Client. If the Client wishes to be sent a couple of images the day after the Photo Shoot for social media purposes, they must specify this at the time of Booking to allow the Photographer to book this time in. Otherwise, due to workload, this might not be possible for the Photographer to provide.

## **10. RETOUCHING**

**10.1** We will edit all images to a high quality using retouching, digital manipulation and artist finishing.

**10.2** Any additional changes required by the Client, such as personal features, colours, adding/removing of people, will come at an additional cost and therefore will take longer than 3 weeks for you to receive your images. The expected time of this will depend on the amount of edited images required by the Client.

## **11. RE-ORDERS**

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

**11.2** There will be an additional charge for re-orders. You must provide the re-order in writing.

## **12. PRODUCTS**

**12.1** The photographs will be available on a USB and ready to collect from the Photographers registered address:

12.1.1 No later than 3 weeks after the Photo Shoot.

12.1.2 We will contact you when the USB is available to collect from the Registered Address.

**12.2** For prints, canvases and/or photo books in your chosen package:

12.2.1 you will have 1 month from the date that the photographs become available to select the photographs.

12.2.2 Failure to comply with clause 12.2.1 will result in the Client not receiving their products; and no refund will be given.

12.2.3 For any photo books, it is the Client's responsibility to decide on their book colours, themes, appearance/finishes and amount of imagery they would like in the album depending on pages they would like. Additional costs may apply to any add ons to your package. This will be discussed at the time between the Photographer and Client.

12.2.4 It is the Photographer's responsibility to decide on the overall image layout and positioning unless it is agreed otherwise by writing.

12.2.5 The Client will be allowed one overall change to their layout. Any additional changes required after this will come at an additional charge due to the editing time taken.

12.2.6 The Client must provide confirmation/written approval to the Photographer before any photo book is ordered.

**12.3** Where a Product is no longer available, a suitable alternative of similar quality will be offered. An alternative will be deemed as correct and acceptable to the Client. Any surcharge resulting from the order of a new Product following rejection of a replacement will be the responsibility of the Client.

## **13. DELIVERY**

**13.1** Usually Products will be ready for collection/delivery up to 6 weeks after the Client has chosen their image orders. However, there has been a recent shortage in fuel and issues regarding transport. Therefore, any products ordered may arrive later than usual. The Photographer will do their very best to provide any products ordered on time however this cannot be guaranteed at present.

**13.2** You can collect the Products from the Registered Address free of charge; or

**13.3** For an additional charge; the Products can be delivered to your chosen address either by tracked Royal Mail or by the Photographer herself if the address is within 10 miles from the Registered Address.

## **14. OWNERSHIP**

**14.1** All rights in images shall remain the sole property of the Photographer at all times unless otherwise specified in Schedule 1.

**14.2** All Products shall remain the property of the Photographer until Payment is received in accordance with Clause 5.

**14.3** 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, Designs and Patents Act 1988 (as

amended) and remain the copyright of the Photographer at all times unless otherwise specified in Schedule 1.

## **15. ALTERNATIVE PHOTOGRAPHER**

**15.1** In the unlikely event of the main Photographer being unable to carry out your photo shoot due to unforeseen circumstances, the Photographer will check availability to carry out the Photo Shoot on an alternative date suitable for the Client. If the Client wishes to cancel and appoint another photographer, the Photographer will provide a refund of any Payments made by the Client and the Terms shall cease to apply to either Party. It is the Clients responsibility to sort out new contracts/terms with the Alternative Photographer based on the contract/terms of the Alternative Photographer.

## **16. LIMITATION OF LIABILITY**

**16.1** If you fail to comply with the terms of this Agreement, the Services will no longer be available to you without further notice.

**16.2** We will not be liable for any loss or damage whatsoever whether direct, indirect, consequential or incidental, actual or anticipated of any the following:

16.2.1 profit;

16.2.2 data (or corruption of data due to viruses or any other technological error or fault);

16.2.3 contact;

16.2.4 opportunity;

16.2.5 reputation or goodwill.

**16.3** We do not make any representations or warranties of any kind, whether express or implied, about the completeness, accuracy, reliability, suitability or availability of the Site and Services, the information or merchantability of any part, feature or content contained on the Site for any particular purpose. This includes any links or references to third-party websites.

**16.4** Any other provision in this Agreement does not attempt to exclude or limit in any way, our liability for the following:

17.4.1 death or personal injury caused by our negligence;

17.4.2 fraud or fraudulent misrepresentation;

17.4.3 wilful misconduct;

17.4.4 any other matter for which it would be illegal for us to exclude or attempt to exclude our liability.

**16.5** Any directions issued to the Client or their guests during a photographic shoot are deemed to be said at persons own risk. The Photographer cannot be held responsible for any personal accidents during a photography shoot.

## **17. INSURANCE**

**17.1** We will maintain Public Liability and Professional Indemnity insurance at all times.

**17.2** In the unlikely event of a total photographic failure or cancellation of this Agreement 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 Agreement.

## **18. FORCE MAJEURE**

The due performance of this contract is subject to alteration or cancellation due to a Force Majeure event.

## **19. CONDUCT AND COMPLAINTS**

**19.1** It is the responsibility of the Client to ensure that all persons involved in the Photo Shoot co-operates on the Date.

**19.2** All complaints shall be raised by the Client directly to Us in writing within 14 days of the occurrence which gives rise to the complaint. We will consider the complaint and shall provide a response to the Client within 14 days of receipt of the complaint.

**19.3** 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.

## **20. DISPUTES**

**20.1** Subject to Clause 19 above, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

**20.2** The Client recognises that any breach or threatened breach of the Contract may cause Us irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to Us, the Client acknowledges and agrees that We are entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **21. CANCELLATION**

**21.1** Where We must cancel the Contract, due to circumstances beyond our control, the full amount of the Booking Fee and any further Payments received will be returned to the Client.

**21.2** Should the Client wish to cancel this Contract at any time, notice of cancellation must be given in writing to Us and the cancellation fees are as follows:

21.2.1 Cancellation more than 2 months before the Photo Shoot - We will retain the Booking Fee.

21.2.2 Cancellation between 1-2 months prior to the Photo Shoot - You will be liable to pay 50% of the Price.

21.2.3 Cancellation less than 1 month prior to the Photo Shoot - You will be liable to pay 100% of the Price.

**21.3** Where the Client wishes to postpone the Photo Shoot, the Price will remain the same as long as the Photographer can reschedule to the Client's new chosen date and product prices have not increased. If prices of products have increased, this will be added onto your original price quoted.

**21.4** In the event that a Photo Shoot needs to be suspended part way through for whatever reason, a second shoot can be rescheduled at the discretion of the Photographer. There will be an additional charge for any additional time above the Time spent at the Second Shoot.

## **22. PERFORMANCE**

The Services shall be deemed performed on completion of the performance of the Services as specified in the Order Acknowledgement.

## **23. INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights in the images and Products shall remain Ours unless otherwise specified in Schedule 1.

## **24. SEVERANCE**

**24.1** If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or

unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

**24.2** If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **25. EPIDEMIC/PANDEMIC**

**25.1** In the unlikely event of an epidemic/pandemic, the Photographer may not be able to carry out work and therefore may result in a cancellation or postponing your booking to a later date.

**25.2** If the Photo Shoot must be postponed to a later date due to a Pandemic, then:

25.2.1 The Photographer will arrange with the Client a new suitable date when allowed to go ahead.

25.2.2 50% of the deposit paid may be refunded only if, under government guidelines, the photo shoot is not allowed to be carried out and the client doesn't wish to postpone this and arrange a new date with the Photographer.

25.2.3 If the government guidelines state that the Photographer is still able to go ahead with the photoshoot, but the Client wishes to cancel, no refund will be given.

**25.3** The photographer will abide by all government guidelines during the photoshoot and the Client must do the same. It is the Client's responsibility to ensure that all members attending the photo shoot abides by the government guidelines. Any set ups that the Client wishes to be photographed, this must be set up before the photographer arrives so that this is ready to photograph on arrival. Any of the photographer's props/backdrops being used will be wiped down and cleaned beforehand, the Client must ensure that their hands have been washed prior to touching any of the props being used.

**25.4** It is the Clients responsibility to let the Photographer know if anyone involved in the Photo Shoot has been tested positive for COVID19, has any symptoms of COVID19 or are awaiting results for COVID19. The Photographer will assume that, if they have not been notified prior to the Photo Shoot taking place of this, that all participants are COVID19 negative. This is to ensure safety of all involved.

**25.5** Photographs will be completed however there may be some delay in you receiving your imagery if the Photographer is affected by COVID19. Any products ordered, there may be a delay on delivery due to the pandemic however the Photographer will be able to provide digital images via WeTransfer.com or Google Drive via a shared link until ordered products arrive. The Photographer will update the Client at all stages of their delivery as and when they are updated (timescales not known) by suppliers. The Photographer will do their best to maintain business as normal. The Photographer may be able to use another Supplier however if the Client wishes to go ahead with this and their prices are significantly higher, then the Photographer will have to add the difference in price onto their chosen package. Alternatively, if the Client is happy to wait until the epidemic/pandemic passes, all Products will be provided, however, with a delay (timescales not known). Please note, with any transferring of images via WeTransfer.com, the Client will have a maximum of 7 days to download the images before the link expires. Images will be sent over in stages therefore it is recommended that the Client waits until all images have been sent across before viewing them so that they can be viewed in order as opposed to in stages based on the download time.