

## TERMS & CONDITIONS

Thank you for booking with Rocking Horse Photography. Please read through these Terms and Conditions before finalising your booking. For your comfort and ease I have summarised the key points (as I see them). Please note, my summary is not legally binding nor official, I have simply done this to make your review of the full Terms and Conditions simpler.

1. There must always be a **parent or guardian** of any children present, at photoshoots.
2. Please do not take **your own photos** during a session.
3. **Session fee** payment is due in full at the date requested during the enquiry process (usually 4 weeks in advance of your session). Without this, the session date and time are not confirmed.
4. You have a **legal right to cancel** a photoshoot session (“cooling off period”) within 14 days from booking, provided the photoshoot has not already happened. After the 14 day cooling off period, if you wish to cancel, with more than 14 days to go to your photoshoot, then you are also entitled to a full refund. Within 14 days of your session date, any refund is at my sole discretion. (I am not an unreasonable person!) Refunds are not available for lateness / unreasonable cancellations. Lateness may result in the session either be cancelled (rescheduled sessions will be charged as a new session), or time being added and charged for; at my sole discretion.
5. If you wish to **reschedule** a session please let me know as soon as possible. I offer one reschedule free of charge (at a mutually convenient date and time, provided the reschedule has been requested with at least 48 hours’ notice of the session). Subsequent reschedules are charged at 50% of the session fee. Rescheduled photoshoots may not be cancelled.
6. If you have a **gallery viewing, design and ordering appointment**, and need to reschedule this within 48 hours of the appointment, at our discretion we may charge a £50 rebooking fee. (This is to discourage late cancellations). Any rescheduled appointments must be made within 2 weeks of the original gallery viewing and ordering appointment date. Any subsequent gallery viewing, design and ordering appointments are charged at £50 per appointment.
7. Please **back your digital images up** in more than one location. I do archive purchased images and aim to keep them for a minimum of 6 years after your session, but this is not a guarantee nor part of the service being purchased. If you require files to be retrieved from back up there is a £30 administration fee.
8. Digital files are supplied only as **jpgs**, in most instances as the highest resolution files available. Unedited files or other file formats are not supplied.
9. There is no legal right to cancel any **bespoke items** ordered including but not limited to wall art, prints and albums. Clearly if I have not already placed the order and you wish to change your mind, please get in touch and I will make every reasonable effort to change your order or refund you, less and charges or costs (including time) incurred and further gallery viewing, design and ordering appointment(s) as required.

10. Please check all artwork products ordered on delivery. In the unlikely event of **damaged goods** being received please sign for them as damaged and inform me immediately (and certainly within 12 hours of receipt). I make every reasonable effort to replace damaged goods as quickly as possible and at no extra expense to yourself provided this guidance and any subsequent guidance is adhered to.
11. **Copyright** of the images remains with the photographer under section 11 of the Copyright, Designs and Patents Act 1988. Digital images are provided with the right for you to re-print at your leisure for personal consumption. Printed artworks cannot be reproduced (but are usually supplied with the corresponding digital file so you shouldn't need to photograph / photocopy them etc!) Editing, re-cropping or other manipulation of the files is not permitted. If you would like further retouching done, please come back to me.
12. **Privacy** – I only use your personal data to fulfil my services to you. To do this, I do have to share your data with other third parties like, but not limited to, online payment providers, online booking systems, online galleries & external retouchers. All my partner, to my knowledge are GDPR compliant. I do not sell or share your data with any other companies or individuals for any other purposes. If you have given me express permission, I may send you marketing communications from time to time.
13. Sometimes, **events outside of our control** happen. These Terms and Conditions also detail what happens in those circumstances. Hopefully in such situations, common sense will prevail and we will all do the best we can in any such circumstances so that everyone is happy and no one is short changed.

## 1. The Photoshoot

We will use all reasonable endeavours to hold the photoshoot on the photoshoot date, at the photoshoot location agreed, subject to our cancellation, rescheduling and refund policy set out below.

Due to the nature of the subjects of the photographs we take during your photoshoot, we cannot guarantee any particular outcomes or guarantee the fulfilment of any specific requests for the photoshoot. However, we will conduct the photoshoot using professional skill and care.

In any event, we will endeavour to accommodate any reasonable requests from you regarding the artistic direction of the photoshoot, but the photographer retains absolute discretion as to the nature of the photographs.

A parent or guardian must be present at all times if we are photographing children. You must not take any photographs during the photoshoot without first obtaining permission from the photographer.

## 2. Packages and Artwork Products

Following your photoshoot, we will prepare and make available a selection of images from your photoshoot. At our discretion and by prior arrangement these may be presented to you either in person (at the studio or another location by prior arrangement only) or exceptionally within an online gallery. In either case, we aim to have your proofs gallery ready within 10 working days of the photoshoot date, but during busy periods this timeframe may be extended.

The number of photographs in your proofs gallery will vary from session to session and will have been communicated to you at the time of booking. We will take into consideration your specific requests as regards the contents of your proofs gallery, but we retain absolute discretion regarding:

- which photographs we include in your proofs gallery (it being acknowledged that not all photographs taken during the photoshoot will be included); and
- the application of any digital editing to any photographs.

Requests you make for specific corrections to images, or re-editing of images, may attract additional costs.

We also accommodate specialist or bespoke requests for retouching of photographs at additional cost. We may need to refer certain retouching services to our third party partners. We will advise you of the costs upon request. Please note that we do not provide raw images.

### **3. In Person Viewings (“gallery viewing, design and ordering appointment”)**

Your proofs gallery will be presented in person by the photographer on a date agreed between you and the photographer. At our sole discretion, we may charge a rebooking fee of £50 if you cancel your scheduled gallery viewing, design and ordering appointment with less than 48 hours’ notice of the gallery viewing and ordering appointment, are late to this appointment, or if any subsequent appointment is required. Any rescheduled gallery viewing, design and ordering appointment must take place within 2 weeks of the original appointment date. The photographer will determine the format in which the proof gallery of images is presented. Unless otherwise agreed by the photographer, you must make your selection of photographs, package and artwork products at your proof gallery viewing and ordering appointment. Please note that prices cannot be guaranteed after the original gallery viewing, design and ordering appointment (due to potential fluctuations in supplier prices).

If you have a gallery viewing, design and ordering appointment, and need to reschedule this within 48 hours of the appointment, at our discretion we may charge a £50 rebooking fee. Any rescheduled appointments must be made within 2 weeks of the original gallery viewing and ordering appointment date pending availability of the photographer. Any subsequent gallery viewing, design and ordering appointments are charged at £50 per appointment.

Late arrival at your gallery viewing, design and ordering appointment may result in the loss of the appointment, time being added and charged for on the day (£50 flat fee), or a new appointment being scheduled and charged for in advance of the new appointment, at the photographer’s sole

discretion.

If we offer an online gallery option, you may be invited to order through an online gallery after your presentation. The section below entitled "Viewing Your Proofs From an Online Gallery" will apply if you are offered this option.

#### **4. Viewing Your Proofs from an Online Gallery**

Your proofs gallery will be presented as an online gallery comprising low resolution web-sized watermarked files. We will advise you by email when online proof gallery is ready for you to view. Your gallery will be available for a limited period of time from the date of the email, as specified in the email and in your booking details. This is usually one week but may be less. Unless otherwise agreed by the photographer, you must make your selection of photographs, package and artwork products within this availability period. We reserve the right (at our option) to charge a fee for extending the availability of your proofs gallery.

Your proofs gallery may be subject to password-protection. Only you may access your online proof gallery. You are solely responsible for maintaining the confidentiality of any password we provide. You agree to accept responsibility for all activities that occur through use of your password by a third party.

You acknowledge that: (i) your access to and use of your online proof gallery may be suspended during any unanticipated or unscheduled downtime or unavailability of any portion or all of our website, including as a result of power outages, system failures or other interruptions; and (ii) we are entitled, without any liability to you, to suspend access to any portion or all of your online proof gallery and/or our website at any time (a) for scheduled downtime to permit us to conduct maintenance or make modifications to your online gallery or our website; (b) in the event of a denial of service attack or other attack on our website and/or our servers or other event that we determine, in our sole discretion, creates a risk to you or to any of our other users; or (c) if it is necessary or prudent to do so for legal or regulatory reasons (collectively, "Service Interruptions"). Where practicable, we will endeavour to post updates on our website regarding any Service Interruption and resumption of service following any such suspension, but we are not liable for the manner in which we may do so or if we fail to do so and we shall have no liability whatsoever for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that you may incur as a result of any Service Interruption.

#### **5. Artwork Products**

If you order an artwork product, a proofed layout of the artwork product, together with any options available to you, will be submitted to you for approval before the artwork product is printed, with the exception of artwork and prints ordered directly through the any online proof gallery you are given, where a visual representation will be presented to you prior to the purchase being completed. When orders are placed directly with the photographer (not through your online gallery), you may request reasonable changes as part of the approval process, but some changes may be subject to additional

charges. We will advise you if additional charges apply.

We will not submit any artwork product for printing unless and until the proofed layout has been approved by you and you have confirmed your options (where available). You will be liable for any costs associated with any changes requested after you have approved the proofed layout.

## **6. Delivery**

We will let you know when you place your order when to expect to receive the package and artwork products (as applicable). Lead times from receipt of your order and payment typically start at two days for digital images and up to 6 weeks for some artwork products (although typically printed items take 2-3 weeks from your approval of proofs). Any delay in payment of fees payable to us will affect the delivery period. If your package includes digital images, these will be delivered via an online gallery and download link, subject to the same availability, confidentiality and "Service Interruptions" Terms and Conditions as Section 4 ("Viewing Your Proofs from an Online Gallery".) Artwork products will be delivered to the address agreed as part of the ordering and viewing appointment.

Risk in the package and artwork products will pass to you upon delivery. You are strongly advised to check all packages and product upon delivery, prior to signing for any goods so that any damage upon arrival can be communicated immediately and the package can be signed for as damaged. At the sole discretion of our print suppliers, damaged goods may be reproduced and re-delivered. The original damaged item may be required to be sent back. Any returns will be arranged between you and the photographer. Please note that new delivery timings may apply.

Once you receive your digital files please store them safely and be sure to back them up so that if your files corrupt or are lost from one source, your images are not lost.

## **7. Archiving**

Images are archived for a limited period of time after your shoot. If you need to access them again, please get in touch to see if your images are still available. If they are available, I can resend you any previously purchased jpegs for a £30 administration fee. (I prefer not to charge this, so highly recommend creating multiple back-ups of your images).

Any orders placed once your photographs have been archived may incur a retrieval fee, in addition to the cost of the order.

Please note that your photographs may be destroyed or archived at our discretion after the expiration of the applicable ordering period referred to in these Terms and Conditions, although it is not my usual practice to do this, and I aim to hold all edited images for a period of at least (but not limited to) 6 years from your session date.

At your request and subject to payment of a £30 administration fee, we may agree to reinstate an online gallery that has been archived, or extend the viewing period for an online gallery that is still active. We are unable to reinstate any online gallery where the images have been destroyed.

## **8. Cancellation, Rescheduling, Lateness and Refund Policy**

### **8.1 Cancellation**

Legal right of cooling off: You have 14 days after the day we accept your booking to cancel the photoshoot; this is called the cooling off period. However, once we have completed the photoshoot you cannot change your mind, even if the cooling off period is still running. If the cooling off period is still running and you decide to cancel after we have started the photoshoot, you must pay us for the services provided up until the time you tell us that you have changed your mind. We will refund you the total session fee by the method you used for payment within 14 days, less the cost of any photography services already provided up to the time of cancellation (including any supplemental session fees such as parking or travel charges). We offer additional cancellation rights that apply once the cooling off period has expired. These are set out below.

Additional Cancellation Rights. In addition to your legal rights referred to above, you are entitled to a full refund of the session fee if you cancel your photoshoot no later than 14 days prior to the photoshoot date. Except in exceptional circumstances and in our sole discretion, we are unable to refund the session fee if you cancel after this date, but you may request that the photoshoot date is rescheduled. Any supplemental session fees paid or payable to a third party are only refundable to you following cancellation of the photoshoot if we are ourselves able to obtain a refund from the third party.

If you wish to cancel the photoshoot, please contact us using the phone or email.

We may cancel your photoshoot for any reason prior to the photoshoot date. We will then provide a full refund of the total session fee, unless we agree a rescheduled photoshoot date with you. (Although it is unlikely to be done without good reason like inclement weather or sickness).

We may terminate your photoshoot on the photoshoot date if we consider there are extenuating circumstances, for example, inappropriate behaviour or if a model/client is ill. We are not required to reschedule the photoshoot or refund any of the total session fee to you in these circumstances.

### **8.2 Rescheduling**

You should give us as much notice as possible if you wish to change the photoshoot date. Occasionally, we may need to reschedule the photoshoot date (for example, because of weather conditions or events outside our control) and, in such event, we will give you as much notice as possible. We will use reasonable endeavours to reschedule the photoshoot to a date that suits you, but cannot promise that an appropriate date will be available. If a suitable date cannot be found you will be given a refund of the total session fee.

You may reschedule the photoshoot date once (provided the reschedule is requested at least 48 hours in advance of the session) at no cost to you after which you must pay a fee equal to 50% of the session fee each you time you wish to further change the photoshoot date. Any supplemental session fees paid or payable to a third party are only refundable to you following rescheduling of the

photoshoot if we are ourselves able to obtain a refund from the third party. You may be required to pay further supplemental session fees in connection with the rescheduled photoshoot date.

Rescheduled photoshoot dates may not be cancelled.

For photo shoots of newborn babies, we usually schedule three photoshoot dates to take place around your baby's due date.

If your baby's actual birth day means the scheduled photoshoot cannot not fall on one of these dates, then we will usually offer you an alternative date that falls within the 15 day period following your baby's birth. If the photographer is not available during that period, we will:

offer you the next available date; or

if that date is not acceptable to you, provide you with a full refund of the session fee (in which case, your contract with us will terminate).

### **8.3 Lateness**

Refunds are not available for lateness or cancellations less than 48 hours before the session. Late arrival at a session may result in the session either be cancelled (rescheduled sessions will be charged as a new session), or time being added and charged for (on the day) at the standard rate of £40 per 15 minute block; at the photographer's sole discretion. You may be offered to complete the session in the remaining time available without an extension / reschedule, if, at the sole discretion of the photographer, it is deemed plausible to still achieve the planned images in the remaining time. There is no guarantee that the images will still be possible.

### **8.4 Refund Policy**

#### **Defective Items and Returns**

We are under a legal duty to supply packages and artwork products that are in conformity with these Terms and Conditions. You should check your delivered package and artwork products and advise us in writing of any defects or errors as soon as possible and certainly within 12 hours of receipt. Nothing in these terms will affect your legal rights.

#### **Order Cancellation**

Your photographs and artwork products are personalised for you so you do not have any right to cancel your order and we are unable to refund or offer an exchange if you change your mind. This doesn't affect your statutory rights.

## **9. Fees and Payment**

You must pay the total session fees in accordance with the terms of payment specified at the time of booking. This is usually 4 weeks in advance of the photoshoot date. Session fees or any other fees due prior to the date of the photoshoot, must be received in full in order to confirm your booking. The

total session fees are only refundable in accordance with our Cancellation, Rescheduling, Lateness and Refund Policy set out above.

The fee that you pay for your artwork products or package will depend on which package and artwork products you select. Prices for all of our packages and artwork products are set out in our full price list, which is available on request. Our prices are guaranteed for a period of 90 days from the photoshoot date unless otherwise stated at the time of booking, and after that our prices are subject to change. (For example to reflect increases in supplier costs).

You must pay the package fee applicable to the package and artwork products you order in accordance with the agreement made at your gallery viewing, design and ordering appointment or via your online viewing gallery during the period it is available for. No part of your order will be delivered unless and until we receive payment in full of all amounts due.

Unless otherwise stated, all fees that are quoted to you by us are inclusive of VAT, if applicable.

## **10. Liability**

We maintain public liability insurance and whilst we make every effort to ensure that your photoshoot is a safe and enjoyable experience and that you receive a photographs and artwork products you will cherish, occasionally things go wrong. This section outlines our liability to you in those circumstances.

Our aggregate liability to you due to, under and/or arising out of or in connection with these Terms and Conditions in contract, tort (including negligence), breach of statutory duty or otherwise, will not exceed the total session fees and package fee actually paid by you to us in relation to the photoshoot and your order. We will not be liable to you for:

- your loss of profit, loss of anticipated savings, loss of revenue or earnings, or loss of business (in each case, whether direct or indirect); or
- any indirect or consequential loss.

Nothing in these Terms and Conditions will in any way exclude or limit our liability to you for:

- death or personal injury caused by our negligence;
- fraud or fraudulent misrepresentation; and/or
- any other matter for which it would be illegal to exclude or attempt to exclude our liability.

Unless the photographer enters into these Terms and Conditions in his or her personal capacity or as a sole trader, the photographer is not a party to these Terms and Conditions and has no liability to you in connection with the photoshoot or the photographs pursuant to these Terms and Conditions.

Except as set forth in this section to the fullest extent permitted by law, we disclaim all warranties, implied or express.

## **11. Intellectual Property Rights**



We will be the first owner of any copyright in the photographs, under section 11 of the Copyright, Designs and Patents Act 1988, as the author of the artistic works that are the photographs. No right, title or interest in the photographs or any copyright therein is granted to you, except as expressly set out in these Terms and Conditions.

If you purchase artwork products, you will own the artwork product, that being the medium on which a photograph is printed, once you have paid for it in full. Copying, scanning or other reproduction of an artwork product is an infringement of our rights and is strictly prohibited.

If you purchase a package comprising digital images, you are entitled to create artwork products using the digital images for your own personal use and you will own the medium on which the digital image is printed. In all cases, your ownership of the artwork product is subject to our ownership of the copyright and other intellectual property rights embodied in the photographs.

Without our prior consent, you undertake not to (a) use any artwork product or digital images that are provided to you for any commercial purpose, or (b) crop, resize, edit, manipulate or otherwise alter any artwork product or digital image provided to you. We may apply anti-copying measures to all artwork products that are provided to you in any Package and to any digital images that are displayed on our website or in your proofs gallery. You agree not to try to circumvent any such measures.

## 12. Privacy

We collect certain personal information from you in connection with your photoshoot (for example: your name and the names of models/those being photographed/attending the photoshoot, email address, payment address and details). Keeping personal information secure and confidential is very important to us. We keep your personal information secure and comply fully with all applicable Data Protection legislation. We will not disclose to any third party any of your personal information without your prior consent.

We will use the photographs and any personal information that you provide to us in connection with the photoshoot only for the purposes of:

- creating and delivering the package and artwork products;
- performing the services contemplated by these Terms and Conditions;
- exercising any rights granted to us pursuant to any specific consents given to us (in your sole discretion); and
- such other purposes as notified to you at the time we obtain personal data from you (together the "Specified Purposes").

You agree to us:

- storing copies of the photographs for the specified purposes;
- storing your contact details on our database in case we need to contact you;
- transferring the photographs and your personal information outside the European Economic Area ("**EEA**"), for the purposes of storage on a cloud server located outside the EEA or where otherwise authorised by you;

transferring the photographs and your personal information to third party providers (inside and outside of the EEA) for the purposes of fulfilling our services to you; and publishing the photographs in accordance with the Specified Purposes.

## **13. Miscellaneous**

### **13.1 Confidentiality**

Each party will keep confidential and not disclose to any third party or use (except as contemplated by these Terms and Conditions), any non-public information obtained from the other party that is marked or otherwise designated confidential (“Confidential Information”); provided, however, that neither party shall be prohibited from disclosing or using Confidential Information that: (i) is publicly available or becomes publicly available through no act or omission of the receiving party, (ii) is or has been disclosed to such party by a third party who is not under an obligation of confidentiality with respect thereto, (iii) is or has been independently developed by such party, without use or reference to the other party’s confidential information, or (iv) must be used or disclosed under court order or applicable law, provided such use or disclosure is to the minimum extent required by such court order or applicable law. You also agree not to disclose the terms of these Terms and Conditions to any third party.

### **13.2 Events Outside Our Control**

If we are prevented or delayed from carrying out the photoshoot or supplying your package or artwork products by an event outside our control (including acts of god, fault or failure of equipment, software, hardware, networks or infrastructure or failure by third parties), then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for failure or delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any goods or services you have paid for but not received.

### **13.3 Governing Law and Jurisdiction**

These Terms and Conditions, and any dispute or claim arising out of or in connection with them or the photoshoot (“Dispute”), whether of a contractual or non-contractual nature, will be governed by and construed in accordance with the laws of England. You and we irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any Dispute.

### **13.4 Complaints**

We endeavour to address any concerns or complaints you may have as quickly as possible. Please address concerns or complaints to us in writing.