

TERMS AND CONDITIONS:

WHEREAS the Client(s) are desirous in booking the Michelle Kalp Photography 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 Michelle Kalp Photography and the Client(s) and it is further agreed that the Michelle Kalp Photography shall be the sole professional photographer of the day.

1.2 In this contract all reference to the Photographer and/or Michelle Kalp and/or Michelle Kalp Photography and/or Michelle van der Westhuysen will imply, indicate and represent Michelle Kalp Photography.

1.3 These terms constitute the whole agreement between the parties and the due performance of the contract is subject to the terms below, which conditions shall further govern the terms of this contract for all goods, services and materials to be delivered by Michelle Kalp Photography to the Client(s). 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 Michelle Kalp Photography. The due performance of the contract is therefore subject to the conditions below and any other alleged oral term shall have no force or effect.

2. DEFINITIONS

The following words or expressions shall carry the meanings assigned there to:

- 1. "Contract"** means these standard terms and conditions as accepted and agreed upon in this agreement, together with all related info sheets, lists of wedding packages available, including the specific package selected by the Client(s), and all relevant and valid quotation sheets in terms of which Michelle Kalp Photography is instructed to undertake the wedding photography, all of which will have effect of a legal binding agreement between parties.
- 2. "Destination Wedding"** means any wedding in which the engaged couple, alone or with guests, travels to attend the ceremony at a geographically distant venue, often associated with a vacation like setting.
- 3. "Material"** includes but is not limited to all photographs, albums, coffee table books, prints, digital images, Cloud galleries and/or any other photographic product or other products comprising or containing reproduction of any form of photographic material, and which has been created by Michelle Kalp Photography.
- 4. "Order"** means any request, order, commission or instruction by or on behalf of the Client(s) for creation and production of Material by Michelle Kalp Photography relating to these terms and conditions and the contract.
- 5. "Price"** means the price for an Order as set out on the face of the Contract, including the cost of any additional work and / or materials ordered and as set out from time to time on an invoice generated by Michelle Kalp Photography.
- 6. "Package"** means the wedding photography package as selected and indicated by the Client(s), which consists of a specific number of hours, which the Photographer will be present at the wedding, and the Material to be produced, together with any further and additional Material ordered.
- 7. "Reproduction"** means any form of publication or copying of the whole or part of any Material whether altered or not and whether by printing, photography, slide projection (whether to an audience or not), xerography, electronic or mechanical reproduction or storage, or for any use as artist's reference or illustration, or in a layout or presentation.
- 8. "the Photographer"** means Michelle Kalp and / or Michelle Kalp Photography or, subject to condition 6.3 below, any Photographer(s) and / or assistants appointed by Michelle Kalp and / or Michelle Kalp Photography, and vice versa.
- 9. "Photographs"** means any product of photography or of any process analogous to photography.
- 10. "the Client(s)"** means the person(s) identified as the client(s) on the Contract, their representatives, successors, assigns, agents and affiliates.

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3. PAYMENT TERMS AND BOOKING FEE.

3.1 Upon acceptance and receipt of the quotation/invoice, the payment of a booking fee of 30% and/or amount stated on the Quotation/Invoice of the total quoted/invoiced fee becomes due and payable immediately in addition to the signed contract. This contract between Michelle Kalp Photography and the Client(s) shall not become effective until it is signed and the initial amount due has been paid. At the time the contract takes effect, Michelle Kalp Photography shall reserve the date and time agreed upon, and not make any other reservations or accept any other clients for said date and time. For this reason, in the event that the Client(s) cancels the contract for any reason, all monies paid shall be retained by Michelle Kalp Photography in order to offset its loss of business.

3.2 The booking fee cannot be exchanged for other services or products. Should the date for your wedding change and the Photographer is not available to attend the new date, you will forfeit your booking fee.

3.3 The second instalment becomes due and payable seven (7) days prior to the day of the wedding day and final payment becomes due the day before the photos are handed over. You may make all payments by way of an Internet bank transfer. Kindly note that Michelle Kalp Photography does not accept any cheques and all proof of payments should be emailed to Michelle Kalp Photography. Please note that all payments made, either by way of an internet / electronic funds transfer, 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 Michelle Kalp Photography.

3.4 No date will be booked and/or secured unless the booking fee, as is referred to above, has been paid in full and the contract has been signed by the client(s).

3.5 No final product relating to photographs, wedding albums and/or any other materials will be released until full payment has been effected.

4. CANCELLATION AND CHANGES

It is the sole responsibility of the Client(s) to inform the Photographer, in writing, of any specific changes or requirements for the event. Cancellation of this agreement must be submitted in writing. In addition to the forfeiture of the booking fee payable in terms of Clause 3 above, the following charges will be due and payable in case of cancellation or change in wedding date, it being the agreed loss suffered by the Photographer due to cancellation: and having specific regard to (a) the nature of the goods or services that were reserved or booked in terms of this contract, (b) the length of notice of cancellation provided by the consumer herein, (c) the reasonable potential for the Photographer to find an alternative Client and (d) the general practice of the relevant industry:

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. INDEMNITY CLAUSE

5.1 The due performance of this contract is subject to alteration and/or cancellation by either party owing to any cause beyond their control and they will not be liable 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 Any act or circumstance resulting in the loss, damage, destruction, theft and such other related events of photographic material (including camera equipment);

5.1.3 Malfunctioning of camera equipment, including but not limited to memory card, flash equipment and other related equipment, where reasonable precautions have been taken.

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; where reasonable precautions have been taken.

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5.1.5 Loss of negatives, memory card and/or digital information by the development laboratory; will only result in delay of delivery of final product.

5.2 The Client(s) further hereby indemnifies and holds the Photographer harmless against any and all liability, claims and expenses, including attorney's fees, arising from Client(s) use of the Photographer's work. The Client(s) further assumes liability and also indemnifies the Photographer for all loss, damage or misuse of any photographs or other material as supplied by the Photographer herein.

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, Michelle Kalp Photographer warrants that he takes the utmost care with respect to exposure, transportation, and processing the photographs. In the unlikely event of total photographic failure, or the cancellation of this contract by either party or in any other circumstance, including but not limited to negatives and/or digital files being lost, damaged, stolen or destroyed, the liability of one party to the other shall be limited to the total value of the contract, but shall not include a refund for any goods already received. Neither party shall be liable for indirect or consequential loss.

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 event of the Photographer being unable to attend to the wedding due to hospitalisation or death, the Photographer reserves the right to appoint/recommend another photographer with equal experience & quality work to attend to your wedding on their behalf to undertake the wedding photography to his / her best ability. However, it may prove difficult or impossible to find a skilled replacement photographer at short notice or at the same price.

6.6 Re-shoots may be arranged if practicable but the Photographer will not be responsible for any further costs ancillary hereto.

6.7 As an extra precaution the Photographer always carries a second camera and other equipment as a back up on the Client(s) wedding day.

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) in the contract.

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.

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7.4 The Photographer will send out the first draft of the Fine art Album in digital format. This is the Client(s) chance to add or remove photos and to communicate any possible changes and additions to the Photographer. 20 Individual changes are included in the album price, thereafter it will be R10 per individual change

7.5 The client(s) have twelve (12) weeks to submit the first set of changes to Michelle Kalp Photography, if changes are not submitted within the twelve (12) week period; Michelle Kalp Photography reserves the right to assume approval of album and will go to print as is & final payment is due.

7.6 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 seven (7) days 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. This will be regarded as an alteration to the contract and must be reduced into writing and agreed upon by both parties.

7.7 All costs incurred due to alterations to the order (albums) made by the Client(s) after this time will be for the Client(s) account and the Client(s) will be held liable therefore.

7.8 In accordance with the accepted practices 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.

7.9 Owing to reflectance caused by a combination of certain dyes and materials, especially synthetic fibers, it is sometimes impossible to record the exact colour of a garment as seen by the human eye. The Photographer will use her skill to produce, to the best of her 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. The photographer cannot guarantee any quality of prints made by the client at an inferior Photographic Lab.

7.10 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.

7.11 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. DESTINATION WEDDINGS

8.1 In the event of a destination wedding, the costs relating to flights, accommodation, car rental and meals are for the account of the Client(s). The Photographer will not be responsible or liable for any costs incurred to enable them to be the Photographer of the day.

8.2 The Photographer works with an assistant and it is recommended that he/she travels with the Photographer and works alongside her at all times.

9. COPYRIGHT

9.1 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.

9.2 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.

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9.3 The right is given to the Client(s) to reproduce and copy reprints for the Client(s) personal use only. Prior consent for the use of the material for any other purpose than for the Client(s) personal enjoyment is to be sought from the Photographer, which consent is to be obtained in writing and which consent will not be withheld unreasonably. It is further recorded and agreed between the parties that the Photographer will be credited for all work done in all publications of whatsoever nature. The Photographer must be notified in writing of any alterations to orders (albums) within one (1) working day of the order being placed with the development laboratory.

9.4 Original files remain the property of the Photographer. Under no circumstances will RAW/ unedited photographs be given to the Client(s).

9.5 The final product of the digital images will be uploaded onto a flash drive/USB by the Photographer, for the clients (back-ups of the images are the client responsibility). All negatives/RAW files and soft copy backups of photos will be kept for a maximum time of 12 months at the Photographer's office and will thereafter be deleted by the Photographer. All orders should be placed with the Photographer before the end of the 12 month period, starting from the wedding date and the Photographer will not be liable for failure to produce any orders placed after this time.

10. FINAL DELIVERY

10.1 The Photographer will deliver the photos 2 months after the clients wedding date, the images will be handed over on a Flash Drive/USB with the selected high resolution and low resolution images as mentioned in the chosen package by the client(s). Any additional material will be handed over once the printing is complete (if applicable as per the package that was chosen). This might take between 4 - 6 weeks depending on how busy the printers are and what is being printed.

11. 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).

12. DISPLAY

12.1 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).

12.2 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.

13. ON THE WEDDING DAY

13.1 Sole Rights: Michelle Kalp Photography shall be the sole professional Photographer at the venue(s) specified. No objection is made to family taking photos at the event, provided that due priority is given to the Photographer to ensure proper performance of this contract. The Photographer is further not responsible for over exposed photos caused by flash or lighting from other cameras/ video cameras.

13.2 Special Requests: All of the customary and / or routine photographs and coverage, as viewed on the Photographer's website, will be incorporated, however, if there is anything uniquely different, or any specific and distinctive request, this needs to be brought to the attention of the Photographer in writing one (1) week prior to your wedding date.

13.3 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.

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13.4 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 Church, Register Office, or Licensed place of wedding for restrictions on photography. The Photographer does not undertake to guarantee any specific picture nor incorporate any specific background, location or group arrangement. Where any official sets unreasonable restrictions or limitations or person possessing the correct legal authority to do so, the Photographer shall not be held responsible for non fulfilment of this contract.

12.5 Abusive behaviour: The Photographer will not tolerate verbally or physically abusive behaviour. If the Client or their official in charge is unable to control the conduct of their guests towards the Photographer or her assistant, resulting in the unacceptable degree of misconduct, or damages to the equipment caused by the guests, it will result in early departure of the Photographer. The Client hereby acknowledges that in such an event, no refunds will be granted.

12.6 Weather Changes: Weather permitting; all photographs requested will be taken as agreed. In the event of rain or hail 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. The Photographer, with the cooperation of the Client(s), will do their best to produce the desired coverage of the wedding within the time allocated.

12.7 Overtime Charged: All over time not booked prior will be charged at R1 400.00 per hour, or part thereof. Should the Photographer feel that most moments have not been covered; she will discuss this with the Client(s) and will stay when it has been approved by them or with their consent. Pre-booked hours can be booked prior to the wedding day at a discounted cost of R1000/hour.

12.8 Meals: Please note that seating needs to be supplied for the Photographer and her assistant within the main reception area and they need to be fully catered for.

12.9 Accommodation: Should the venue for the function be more than 150 kilometers (1,5 hour's drive) from Lyttelton, Centurion, suitable accommodation for one (1) night should be provided for the Photographer and her assistant. Should the venue for the function be more than 250 kilometers (2,5 hour's drive) from Lyttelton, Centurion, suitable accommodation for two (2) nights should be provided for the Photographer and her assistant. These accommodation charges are excluded from the quote and are for the Clients account.

12.10 Travelling & Expenses: Travel charges of R4,00 per kilometer (over and above the included 100km) from Lyttelton, Centurion will be charged plus tollgates, if applicable. These travelling charges are excluded from the quote and are for the Client(s) account.

12.11 Engagement shoots: Engagement shoots are booked on on days that Michelle Kalp Photography has open. All location-shooting fees are excluded from the quote and are for the Client(s) account. The quote includes travel up to 50km from Lyttelton, Centurion, thereafter R4,00 per kilometer (over and above the included 50km) will be charged and are for the Client(s) account. Late arrivals of 20 minutes by the Client(s) will result in rescheduling the engagement shoot and a R500 rescheduling charge will be due and payable to the Photographer.

13. DOMICILIUM CITANDI ET EXECUTANDI

The Parties choose as their domicilium citandi et executandi 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 on the contract, read with the relevant info sheets. Either party may by way of notice to the other party change the physical address chosen as its domicilium citandi et executandi.

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14. BREACH

14.1 The Client(s) agree and acknowledge that in the event of them breaching any condition contained in this document, or the Client(s) passing away or the Client's estate being placed under any order of provisional or final sequestration, provisional or final winding up, or provisional or final judicial management, or any similar provision in its country of origin, then the Photographer shall, without prejudice to any other remedies it may have in law, be entitled to summarily cancel this contract with the Client(s) without notice to the Client and to repossess 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, in either event without prejudice to the Photographer's right to claim damages.

14.2 Furthermore, In the event of the Client(s) breaching any condition contained in this document, the relevant party consents to the payment of all legal costs, including the payment of collection commission and tracing agent's fees.

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 Michelle Kalp Photography, 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 are 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

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.

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18. ACCEPTANCE AND ACKNOWLEDGEMENT

18.1 The Client(s) 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) further acknowledges that they have read and understood the terms and conditions and agrees to all of the above and is familiar with all details of the selected wedding package such as the number of photos agreed to in the package, number of prints to be made, etc.

18.2 Kindly note that the Photographer will only deal with the contracted bride & groom to this agreement and no other third party responsible for payment.

**I have read and understood the terms above. I hereby agree to the terms of this agreement.
I am of legal age to enter this contract under South African Law.**

