



## GENERAL TERMS & CONDITIONS

### **Article 1 About Wit Photography**

Wit Photography is part of Canterbury Stage Productions C.V.

Our website is [www.wit-photography.com](http://www.wit-photography.com)

You can reach us in the following ways:

E-mail: [info@wit-photography.com](mailto:info@wit-photography.com)

Telephone: +31-(0)6-14437993

Facebook: <https://www.facebook.com/witphotography/>

Pinterest: <https://nl.pinterest.com/witfoto/>

Instagram: [www.instagram.com/witphotography/](http://www.instagram.com/witphotography/)

KvK (Dutch Chamber of Commerce)-number: 27347066

### **Article 2 Definitions**

In these general terms and conditions a number of terms appear. Below you will find an explanation of these terms.

The terms *we*, *us* and *our*, refer to *Wit Photography* as described in article 1 of these general terms and conditions. We are the *user* of these general terms and conditions.

The terms *you* and *your* refer to the *counterparty*, the party to whom Wit Photography presents an offer/proposal and/or with whom Wit Photography concludes an agreement or wishes to conclude an agreement.

The term *parties* refers to you and us together.

The term *day* refers to a calendar day and not a working day, unless explicitly stated otherwise in writing.

When speaking about a *service*, we mean an assignment; any activity to be performed or performed by us on the basis of an agreement.

By *written* we mean on paper or by e-mail.

When we refer to a *work*, we mean a photographic work in these general terms and conditions.

A *photographic work* is a work as referred to in Article 10 paragraph 1 sub 9 of the Copyright Act (Auteurswet 1912), or other works within the meaning of the Copyright Act, which can be equated with the photographic works referred to.

By *disclosure*, we mean making public within the meaning of art.1 in conjunction with 13 of the Copyright Act. With *reproduction* art.1 jo 12 of the Copyright Act.

An *image carrier* is the carrier on which a Photographic Work (whether or not recognisable to the eye) is recorded, such as (but not limited to!): a slide, negative, print, duplicate, Polaroid, CD-ROM, DVD or USB stick.

### **Article 3 Applicability**

These general terms and conditions apply to all our offers/proposals, all our quotations, services and invoices and also to all agreements that we enter into with you. These general terms and conditions also apply in the event of additional work or a follow-up assignment.

Deviation from these general terms and conditions is only possible if the parties explicitly agree in writing. If the parties agree, the deviation only applies to the agreement for which the deviation has been agreed. You cannot invoke this deviation in other (future) agreements with us.

We may unilaterally change or supplement our general terms and conditions. We are always allowed to make changes and/or additions, small in nature and/or of minor importance. We will discuss with you in advance any changes and/or additions, large in nature and/or demonstrably to your disadvantage.

Your (general) terms and conditions do not apply to agreements that you enter into with us.

If one or more provisions of these general terms and conditions are at any time partially or wholly void or annulled, the remaining provisions will remain fully applicable. The parties will consult to agree on new provisions to replace the voided or annulled provisions. The purpose and intent of the original provisions will be respected as much as possible.

If you object to one or more provisions in these general terms and conditions, you must make this known in writing before accepting our offer/proposal. By accepting our offer, you automatically agree to our general terms and conditions.

#### **Article 4 Quotation, agreement and confirmation**

Our offers/proposals are not binding, unless explicitly stated otherwise. We send our offers digitally, unless we make other agreements about this.

Our offers are carefully compiled based on your wishes and all the information you provide to us. We therefore expect you to provide us with all relevant information that may be important in the execution of the assignment. If you do not do this and it turns out afterwards that the offer does not include all the necessary work, then we have the right to revoke an already accepted offer, as a result of which the agreement is not concluded. In that case, the services and/or work already performed up to the moment of revocation will be charged on the basis of the then applicable hourly rate.

If we have made a composite offer for you, we are not obliged to perform only part of it, if you only accept part of our offer. By a composite offer, we mean that we offer you a combination of several services or assignments in one quotation.

In principle, we do not charge you a fee for preparing an offer.

If (extra) conditions are attached to the offer, we will explicitly state this in the offer.

If there is an obvious error or mistake in our offer, we are not bound by this offer. Offers do not automatically apply to future agreements that you conclude with us.

An agreement is only concluded after you have accepted and confirmed our offer and the general terms and conditions in writing and have complied with the (possibly) set conditions. We have the right to revoke this offer up to two working days after receipt of your acceptance of our offer.

It is also possible that you have not received an offer from us, but that we do carry out work for you. For example, when there is an emergency. In such cases, the agreement between you and us is concluded at the moment that we start the work on your behalf. In principle, our usual fee will be applied for this. If this does not apply, we will determine the compensation in reasonableness and fairness.

By accepting our offer/proposal you enter into a payment obligation.

Unless the parties agree otherwise, the agreement ends automatically after the service has been fully performed as agreed and the total invoice amount has been transferred (by you) to the account of Wit Photography.

## **Article 5 Execution of the agreement and execution timings**

We execute the agreement to the best of our knowledge and ability and in accordance with the requirements of good craftsmanship. We may carry out the assignment according to our own technical and creative insight.

We reserve the right to compose the photo reportage. We are free to judge at our own discretion and knowledge which photos are suitable and which are not. You cannot claim the photos that we think are unsuitable.

Date, time and location are determined in consultation with you. While on location, you must do everything which is reasonably necessary to make the assignment possible in a timely and correct manner.

We may use (the services) of third parties in the execution of the agreement. If this entails additional costs, we will inform you about this first. We are free to choose our suppliers, including photographers, stylists, etc.

If we have agreed upon certain execution and/or delivery terms with you, these terms are always indicative, unless the parties expressly agree otherwise. An agreed execution term only starts if and when:

- we have received all data, wishes, documents, materials and/or information from you that are necessary for the execution of the agreement and/or;
- the parties have agreed so, we have received your (down) payment on the account, and/or;
- you have complied with (any) other conditions.

Until that moment, we have the right to suspend the execution of the agreement. We have the right to charge you for any costs incurred as a result of this. We will use the hourly rate applicable at that time.

The agreement(s) that we conclude with you lead(s) to a best efforts obligation and never to a result obligation. We also cannot guarantee that we and/or the photos meet your expectations. After all, an expectation is subjective.

We only execute the agreement on your behalf. Third parties cannot grant any rights to the content of the work performed by us, under whatever name or title.

## **Article 6 Additional work**

Additional work may arise due to certain circumstances or facts that were not known when we concluded this agreement and/or that the agreement is amended by mutual agreement. Additional work may also arise because you have not supplied the data, documents, materials and/or information in accordance with article 5 or when you have not done this in time. If you wish to purchase more or supplementary services or work, this can also lead to additional work. Additional work will be charged on the basis of the applicable hourly rate, unless we make other arrangements with you.

## **Article 7 Photography and (delivery) result**

We do our best to take your (specific) wishes into account. We can of course never guarantee that the result is completely to your taste. After all, taste is personal.

Photographic works are delivered in consultation with you in the agreed manner. The risk lies with you from the moment of shipment. In general, the (digital) photos are delivered within 3 months after the wedding. Albums and any additional products are usually delivered within 60 working days from the date the digital sample album is approved by you.

If we agree that the delivery time of the works will be brought forward, we have the right to increase the originally agreed fee by 50%.

## **Article 8 Prices and payment**

Unless expressly stated otherwise, all prices:

include VAT;

exclude any other government levies;

unless expressly agreed otherwise in writing, exclude any costs we have to incur when executing the agreement, including the costs of third parties hired by us.

The accepted (online) offer is converted into one or more invoices. You will receive our invoice(s) by e-mail.

You must report any inaccuracies on the invoice to us immediately, but at the latest within 14 days of the invoice date. After this period, any right to complaint expires.

The total amount (100%) of the agreement must be paid as follows:

50% within 14 days of the conclusion of the agreement and;

50% no later than 1 month before the assignment/wedding date.

Your reservation will expire if we have not received the (down) payment of the invoice after 30 days. However, the payment obligation remains.

The (possible) compensation for the services of third parties as well as your orders for (extra) photos, photo albums and/or related products must be paid in full in advance. As soon as we have received the amount on our account, your order will be processed immediately.

### **Article 9 Intellectual property rights**

Intellectual property right is a collective term for rights that rest on a work. They protect the person who created the work against the use, copying and exploitation of that work by others without the creator's permission. These rights belong to us. You buy the photo, not the rights.

All intellectual property rights arising from the agreement belong to us and/or our licensors. This also applies to concepts and/or proposals that have not been implemented.

If you instruct us to use certain data, documents, materials and/or information, it is your responsibility to ensure that you always have a valid license to use them. You indemnify us against all claims in connection with the aforementioned data, documents, materials and/or information.

To investigate the existence of possible intellectual property rights with regard to the materials supplied by you is not part of the agreement.

When reproducing and/or publishing a work, you always observe our personality rights (persoonlijkheidsrechten in Dutch) in accordance with art. 25 paragraph 1 sub c and d of the Copyright Act

Unless the work is not suitable for this, we have the right to mention or have our name (Wit Photography) mentioned on or near the work and/or to have it removed.

Unless expressly agreed otherwise in writing, we have the right to use the works for (our own) (promotional) purposes, including website, portfolio, social media, printed matter, trade competitions and articles and/or to sell them to third parties for both commercial and non-commercial purposes. The work made may be provided by us to the other suppliers/third parties who have been involved in the execution of the agreement.

We consider any use by you that has not been agreed on, as an infringement of our copyright.

For any copyright infringement, we charge three times the usual license fee (for such use), whereby we do not lose the right to compensation for any other damage suffered, including direct and indirect damage as well as the actual judicial and extrajudicial costs.

You may not reproduce, publish, edit or change the work without express written permission (via an agreement!) from us. The photos may not be edited (by third parties), so no use of filters (including a.o. Instagram).

Any assigned right of publication is personal and non-transferable to third parties.

#### **Article 10 Licenses**

When you have fully complied with your obligations under the agreement, you obtain a non-transferable, non-exclusive license to use the result in accordance with the agreement.

If we have not stipulated anything about the scope of the license, you have the right to use it once, in unaltered form. Licenses are not transferable to third parties. You may not sublicense to third parties.

#### **Article 11 Warranties**

We guarantee that our products and/or services comply with the agreement, the specifications stated in the offer, the reasonable requirements of reliability and/or usability and the legal provisions and/or government regulations existing on the date on which the agreement was drawn up.

We guarantee that the result delivered by us does not infringe the intellectual property right of a third party, all this with due observance of Article 9. In the event of violation, we will remove the infringing components and/or adjust it in such a way that the use of the result no longer infringes intellectual property rights. This right lapses if you make changes or adjustments yourself or if you let someone else make changes or adjustments.

#### **Article 12 Liability**

We are only liable if and insofar as stated in this article and in these general terms and conditions.

We are only liable for an attributable shortcoming in the performance of the agreement if you give us immediate, proper and written notice of default, grant us a reasonable period to remedy the attributable shortcoming and if, after the expiration of that reasonable period, we are still in attributable breach.

We are not liable for:

your errors or shortcomings in the information, data or material that you have prescribed or provided to us;

misunderstandings, errors or shortcomings with regard to the execution of the agreement if these are caused or caused by your actions and/or omissions;

errors or shortcomings of third parties engaged by or on behalf of you;

errors or shortcomings due to changes in the result by you and third parties engaged by you;

damage caused by third parties gaining unauthorised access to the delivered performance (hacking).

With the exception of cases of intent or wilful recklessness on our part, liability for damage is limited to the agreed price under this agreement.

We are only liable for direct damage attributable to us. Liability for indirect damage, including consequential damage, lost profit, lost savings and damage due to business interruption is excluded. Any liability expires after one year from the moment the agreement is completed.

After completing the assignment, we have no obligation of retention with regard to the materials and data used. We will keep the selection of the photo material made by us for a maximum period of 1 year.

You indemnify us against all claims from third parties, including the (reasonable) costs of legal assistance, arising in any way from the agreement between you and us, except in the case of intent or gross negligence on our part.

Shortcomings in the performance of the agreement cannot be attributed to us if they are not due to our fault, nor are they for our account by law, the agreement or generally accepted standards (force majeure), including, but not limited to, epidemics and pandemics.

You understand that photographic works may fade and/or discolor over time due to the inherent qualities of paint inks and other materials and you release us from any liability for any claims based



on such fading or discolouration. Prints made at different times, from different cameras, will vary in color balance and/or finish.

If damage is caused to the photographer, a hired third party, or to our equipment due to your act or omission or that of one of the attendees of your event, this damage will be recovered from you.

### **Article 13 Force majeure**

In the event of force majeure on our side, we have the possibility to temporarily suspend the performance of the agreement or, insofar as reasonably possible, we will provide a replacement photographer with a similar style. We will inform you about this in writing in good time and we will consult with you. In any case, we do not owe you any compensation in the event of force majeure.

### **Article 14 Cancellations and rescheduling**

To cancel an assignment/agreement you need to send an email to [info@wit-photography.com](mailto:info@wit-photography.com).

If you cancel between the moment the agreement was signed and 60 days before the start of the assignment/wedding, you owe us 50% of the total amount of the agreement. If the deposit has already been paid by you, it is non-refundable.

If you cancel within 60 days before the start of the assignment, we have the right to charge you 100% of the total amount of the agreement. Any costs that we did not have to incur will be deducted from this (usually this equals a 50% refund).

If you are a professional commercial client, a legal person or a person who acts in a profession or for a company and you cancel the assignment, we have the right to charge the agreed fee in full.

Moving an assignment to a later date in the future is only possible if we and any third parties engaged by us are available on the later date. Rescheduling the assignment is in principle free of charge, unless we or one of the third parties engaged by us have to incur additional costs to accommodate the reschedule

Already ordered and/or delivered photos and albums as well as related products are made personally for you. Refund of money is therefore not possible.

We may suspend or terminate the agreement with immediate effect if:

you do not, not fully or not timely fulfil your obligations under the agreement;

the relationship between us and you and/or your family/guests is and remains so tense that the quality of our work is compromised;

after signing the agreement, we have become aware of circumstances as a result of which we have good grounds to fear that you will not fulfil your obligations;

due to delay on your side, we can no longer be expected to fulfil the agreement under the originally agreed conditions;

if circumstances of such a nature arise that fulfilment of the agreement is impossible.

If we can attribute the suspension or the dissolution to you, then we have the right to recover from you any damages we suffer as a result.

If we cannot attribute the suspension or dissolution to you, and if we have not yet performed any work, but you have already transferred a (down) payment to our account, we will transfer this (down) payment to your account within ten days. If we have already performed work, we reserve the right to charge this work based on the number of hours worked and at the applicable hourly rate. If you have already transferred a (down) payment to our account, this will be deducted from the invoice amount. If there is still a balance left in your favor, we will transfer this back to your account within ten days.

In the event of liquidation, an (application for) suspension of payments or bankruptcy, seizure on your side or if you are dependent on debt rescheduling, in other words you can no longer freely dispose of your assets, then we are free to terminate the agreement with immediate effect. In that case, we do not owe you any compensation. Any claims we have against you become immediately due and payable in the aforementioned situations.

If we repeatedly perform similar work for you, this is referred to as a continuing performance agreement, unless otherwise agreed in writing. A continuing performance agreement can only be terminated by you by giving written notice on the condition that you take into account a reasonable notice period of one month. During this month you will continue to use the usual services or we will be financially compensated by you. In the event of termination, this financial compensation will be calculated on the average (monthly) invoice amount.

In case of a dissolution and you have already received (interim) results, you are not (or no longer) permitted to use them, unless we have (now) received a pro rata financial compensation for these (interim) results and we have given explicit and written permission that you may (still) use these results.

## **Article 15 Confidentiality**

If, during the execution of the agreement, the parties become aware of certain information from the other party that they (reasonably can) know is confidential, they will not disclose this information to third parties in any way. An exception to this applies when a statutory provision or court decision requires disclosure.

The obligation of confidentiality continues after termination of the agreement for as long as the party who provided the information can claim the confidential nature of the information. The obligation of confidentiality also applies to employees and any third parties engaged by each party.

We may use the result of the agreement for promotional purposes. No confidential information will be shared here.

### **Article 16 Exclusive photographer**

The parties agree that Wit Photography is the only professional photographer hired for the assignment/wedding. Other non-commercial parties may take photos or videos as long as this does not conflict with our obligations under the agreement. If one or more other (paid or unpaid) photographers displays behaviour that conflicts with our working method and our work is negatively affected as a result of this behaviour, we have the right to suspend our work at that time until the other photographer(s) stops the conflicting actions. In such a situation, we are not responsible for any lost time and/or missed photos. In addition, we do not owe you any compensation or refund.

### **Article 17 Hindrance clause**

It is your responsibility to ensure that before and during the fulfilment of the agreement we are not hindered by, among other things, certain (negative) behavior on your part, your guests and/or other persons present. If we and/or the third party(ies) engaged by us experience inappropriate, threatening, hostile, offensive conduct, including but not limited to unwelcome sexual advances, oral or physical conduct of a sexual or otherwise undesirable nature, we will act as follows:

A verbal warning is first given to you and/or to the person causing the hindrance;

If the hindrance continues, the person causing the hindrance will leave the event or;

If this is not complied with and the nuisance continues, we will terminate our work immediately and leave the event. In this case, we consider the agreement completely fulfilled and terminated. You are not entitled to a refund of amounts already paid, nor are you entitled to any form of (additional) compensation.

### **Article 18 Complaints**

If you have a complaint about the execution of the agreement, we are of course very sorry. We have a complaints procedure for such cases.

It is your responsibility to report a complaint to us in writing within a reasonable time after you have discovered a defect. You must describe your complaint completely and clearly. You will receive a response from us within 14 days after we have received your complaint.

You must give us at least four weeks to resolve a complaint in mutual consultation with you. After this period of four weeks, your complaint evolves into a dispute.

### **Article 19 Parking costs**

Your travel and parking costs, if applicable, are not included in our offer/proposal and this agreement.

### **Article 20 Privacy policy**

Your privacy is very important to us and we therefore handle your data with care. You can read how we do that in our privacy policy on our website [www.wit-photography.com](http://www.wit-photography.com)

Your data will only be stored and used for the execution of the agreement.

### **Article 21 Disputes**

Agreements between you and us to which these general terms and conditions apply are exclusively governed by Dutch law. The law determines which court has jurisdiction to hear a dispute. The Vienna Sales Convention (Weens Koopverdrag, 1980) is excluded.

**Version 1.1 December 2020.**