

# Terms & Conditions

## TERMS AND CONDITIONS

« shade-photography.com » (“the “website”) is made available by SHADE PHOTOGRAPHY and all content, information, services, designs, names, logos, text, photographs, video, audio, audiovisual works, graphics, user interfaces, and software ordered or provided on or through the Website (collectively, the “Content”) may be used solely under the following legally binding terms and conditions. (“Terms and Conditions”). By browsing and using this website you are agreeing to comply with and be bound by the following terms and conditions of use which, together with our Privacy Policy, govern SHADE PHOTOGRAPHY relationship with you in relation to this website: shade-photography.com. These Terms and Conditions are effective immediately and dated 15 June 2019.

### PLEASE READ CAREFULLY

This Terms and Conditions Agreement (“Agreement”) is a legal agreement between you and SHADE PHOTOGRAPHY providing, among other things, the terms and conditions for your access to and use of this website shade-photography.com and the Content.

We reserve the right, at our sole discretion, to update, change or replace any part of these Terms and Conditions by posting updates and changes to our website. It is your responsibility to check our website periodically for changes. Your continued use of or access to our website following the posting of any changes to these Terms and Conditions constitutes acceptance of those changes. IF ANY OF THESE TERMS OF USE OR ANY FUTURE CHANGES ARE UNACCEPTABLE TO YOU, DO NOT USE THIS WEBSITE OR THE CONTENT.

THIS TERMS AND CONDITIONS CONTAINS WARRANTY AND LIABILITY DISCLAIMERS. BY USING THE WEBSITE, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS WITHOUT ANY RESERVATIONS, MODIFICATIONS, ADDITIONS, OR DELETIONS, AND WHETHER OR NOT YOU HAVE READ THEM. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS, YOU ARE NOT AUTHORIZED TO USE THE WEBSITE. YOU MAY BE DENIED ACCESS TO THE WEBSITE WITH OR WITHOUT PRIOR NOTICE IF YOU FAIL TO COMPLY WITH ANY PROVISION OF THIS AGREEMENT.

## **1. AUTHORIZED USERS**

Minors (persons under the age of 18) are not eligible to use the website unsupervised and we ask that minors do not register, access or use the website or submit any personal information to us. By using the website unsupervised, and/or registering for an account, you warrant that you are 18 years of age or older

## **2. USER INFORMATION**

You may browse the website without registering, but as a condition to using certain aspects of the website, taking advantage of the website and email

communication services, a user of the website must first complete the profile registration page and provide certain personal information (“User Information”). Our information collection and usage policies with respect to such User Information are set forth in the SHADE PHOTOGRAPHY Privacy Policy. You agree not to: (i) share your registration information with any other person; or allow any third party to use your login information. You acknowledge and agree that you are solely responsible for the accuracy and content of User Information and you agree to keep it up to date. You are solely responsible for activity that occurs on your account and shall be responsible for maintaining the confidentiality of your password. You shall promptly notify us of any breach of security by email to [hayden@shade-photography.com](mailto:hayden@shade-photography.com)

### **3. LICENSE TO USE THE WEBSITE**

3.1 Limited License. The Website and Content are protected by copyrights, trademarks, patents, service marks, international treaties, and/or other proprietary rights and laws of the U.S. and other countries. We grant to you a limited, non-exclusive, non-transferable, personal, non-commercial license to access and use the website and the Content according to this Agreement. We reserve all right, title and interest not expressly granted under this license to the fullest extent possible under applicable laws.

ANY USE OF THE WEBSITE OR CONTENT NOT SPECIFICALLY PERMITTED UNDER THIS AGREEMENT IS STRICTLY PROHIBITED.

3.2 Prohibited Use. You agree that you will not: (i) use the website for any illegal purpose, and any illegal manner, (ii) reproduce any copyrighted content; (iii) copy, store, edit, change, prepare any derivative work of or alter in any way any of the content provided on the website; or (iv) use the website in any way that violates the terms of this Agreement.

3.3 Termination. We may terminate your access to all or any part of the website at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your account.

#### **4. SITE INFORMATION/ERRORS, INACCURACIES AND OMISSIONS**

We try to ensure that the information posted on the website is correct and up-to-date. Occasionally there may be information on the website that contains errors, inaccuracies or omissions. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information. We undertake no obligation to update, amend or clarify information in the website. No specified update or refresh date applied in the website, should be taken to indicate that all information in the website has been modified or updated.

#### **5. PROHIBITED ACTS**

In addition to other prohibitions as set forth in the Terms and Conditions, you are prohibited from using the site or its content: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Service or of any related website, other websites, or the Internet; (h) to collect or track the

personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of the Service or any related website, other websites, or the Internet. We reserve the right to terminate your use of the Service or any related website for violating any of the prohibited uses.

## **6. COPYRIGHTS**

As between you and us, you acknowledge that we own solely and exclusively, all rights, all title and copyrights in and to the content provided on the website, or are the sole users authorized to display this content within the site. All title and intellectual property rights in and to the content provided on the website is the property of SHADE PHOTOGRAPHY and its photographers, or is licensed and authorized for use solely for the purpose of display on the website, and may be protected by the applicable copyright or other intellectual property laws and treaties and subject to use restrictions under such laws or treaties. When you use or download any content from the website you do not acquire any ownership of any such content, code, data or materials. Copying, reproducing, downloading, posting or reposting any content from this website (for anything other than strictly personal, non-public and non-commercial use), is strictly prohibited and constitutes a violation of copyright laws. If you acquire any physical photographic prints, posters, books or other products in the SHADE PHOTOGRAPHY SHOP, you are only acquiring the physical product and may not make any reproduction for any purpose. You are only acquiring the physical object and no intellectual property rights other than the limited right to display the product for your personal use and the right to resell the product.

If you are acquiring a digital photographic work by purchasing an NFT, you are not acquiring any copyright or other intellectual property in the digital photographic file associated with the NFT and may display the NFT for personal use only or resell the NFT under the terms of the smart contract.

## **7. TRADEMARKS**

The trademarks, logos, service marks, graphics and trade names (collectively, the “Trademarks”) displayed on the website are registered and unregistered Trademarks of SHADE PHOTOGRAPHY or other rights holders and may not be used in any manner that is likely to cause confusion, or that disparages or discredits SHADE PHOTOGRAPHY or the applicable rights holder. You do not receive, by implication or otherwise, any right or license to use any Trademark displayed on the website.

## **8. PRIVACY POLICY**

Our personal information practices on the website are governed by the SHADE PHOTOGRAPHY Privacy Policy.

## **9. THIRD-PARTY LINKS**

The website may include materials from third-parties. Third-party links on this site may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy and we do not warrant and will not have any liability or responsibility for any third-party materials or websites, or for any other materials, products, or services of third-parties. We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party’s policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to

the third-party.

## **10. USER COMMENTS, FEEDBACK AND OTHER SUBMISSIONS**

If, at our request, you send certain specific submissions (for example contest entries) or without a request from us you send creative ideas, suggestions, proposals, plans, or other materials, whether online, by email, by postal mail, or otherwise (collectively, 'comments'), you agree that we may, at any time, without restriction, edit, copy, publish, distribute, translate and otherwise use in any medium any comments that you forward to us. We are and shall be under no obligation (1) to maintain any comments in confidence; (2) to pay compensation for any comments; or (3) to respond to any comments. We may, but have no obligation to, monitor, edit or remove content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property or these Terms of Service. You agree that your comments will not violate any right of any third-party, including copyright, trademark, privacy, personality or other personal or proprietary right. You further agree that your comments will not contain libelous or otherwise unlawful, abusive or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Service or any related website. You may not use a false e-mail address, pretend to be someone other than yourself, or otherwise mislead us or third-parties as to the origin of any comments. You are solely responsible for any comments you make and their accuracy. We take no responsibility and assume no liability for any comments posted by you or any third-party.

## **11. TERM**

This Agreement will remain effective until terminated by us. We may terminate, change, suspend or discontinue any aspect of the Web Site at any time. We may restrict, suspend or terminate your access to the Web Site if in our sole judgment we believe you are in breach of our terms and conditions or applicable law, or for any other reason without notice or liability. We maintain a policy that provides for the termination in appropriate circumstances of the Website use privileges of users who are repeat infringers of intellectual property rights.

## **12. DISCLAIMERS**

UNLESS PROHIBITED BY LAW, THE WEBSITE AND THE CONTENT, ARE PROVIDED ON AN “AS IS, AS AVAILABLE” BASIS AND WE EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. UNLESS PROHIBITED BY LAW, WE DISCLAIM ALL RESPONSIBILITY FOR ANY LOSS, INJURY, CLAIM, LIABILITY, OR DAMAGE OF ANY KIND RESULTING FROM, ARISING OUT OF OR IN ANY WAY RELATED TO (A) ANY ERRORS IN OR OMISSIONS FROM THE WEBSITE OR THE CONTENT, INCLUDING, BUT NOT LIMITED TO, TECHNICAL INACCURACIES AND TYPOGRAPHICAL ERRORS, (B) THIRD PARTY COMMUNICATIONS, (C) ANY THIRD PARTY WEBSITES OR CONTENT DIRECTLY OR INDIRECTLY ACCESSED THROUGH LINKS ON THE WEBSITE, INCLUDING BUT NOT LIMITED TO ANY ERRORS IN OR OMISSIONS (D) THE UNAVAILABILITY OF THE WEBSITE OR THE CONTENT (E) YOUR USE OF THE WEBSITE OR THE CONTENT, (F) YOUR USE OF ANY EQUIPMENT OR SOFTWARE IN CONNECTION WITH THE WEBSITE OR THE CONTENT.



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### **13. LIMITATION OF LIABILITY**

IN NO CASE SHALL SHADE PHOTOGRAPHY, OUR DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, INTERNS, SUPPLIERS, SERVICE PROVIDERS OR LICENSORS BE LIABLE FOR ANY INJURY, LOSS, CLAIM, OR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION LOST PROFITS, LOST REVENUE, LOST SAVINGS, LOSS OF DATA, REPLACEMENT COSTS, OR ANY SIMILAR DAMAGES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING FROM YOUR USE OF ANY OF THE SERVICE OR ANY PRODUCTS PROCURED USING THE SERVICE, OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OF THE SERVICE OR ANY PRODUCT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY LOSS OR DAMAGE OF

ANY KIND INCURRED AS A RESULT OF THE USE OF THE SERVICE OR ANY CONTENT (OR PRODUCT) POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICE, EVEN IF ADVISED OF THEIR POSSIBILITY AND TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS PROHIBITED OR FAILS OF ITS ESSENTIAL PURPOSE, SOLE OBLIGATION TO YOU FOR DAMAGES SHALL BE LIMITED TO \$100.00. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the maximum extent permitted by law.

YOU AGREE THAT, UNLESS PROHIBITED BY LAW, ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE ARISING HEREUNDER WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS, AND THAT YOU WILL NOT SEEK TO HAVE ANY DISPUTE HEARD AS A CLASS ACTION, A REPRESENTATIVE ACTION, A COLLECTIVE ACTION, A PRIVATE ATTORNEY-GENERAL ACTION, OR IN ANY PROCEEDING IN WHICH YOU ACT OR PROPOSE TO ACT IN A REPRESENTATIVE CAPACITY. YOU FURTHER AGREE THAT, UNLESS PROHIBITED BY LAW, NO PROCEEDING WILL BE JOINED, CONSOLIDATED, OR COMBINED WITH ANOTHER PROCEEDING WITHOUT THE PRIOR WRITTEN CONSENT OF THC AND ALL PARTIES TO ANY SUCH PROCEEDING.

## 14. INDEMNITY

You agree to indemnify, defend and hold harmless SHADE PHOTOGRAPHY and our parent, subsidiaries, affiliates, partners, officers, directors, agents, contractors, licensors, service providers, subcontractors, suppliers, interns and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third-party due to or arising out of your breach of these Terms and Conditions or the documents they incorporate by reference, or your violation of any law or the rights of a third-party.

## 15. GENERAL

15.1 You will be responsible for providing the dial-up, DSL cable modem or other form of Internet access and any other hardware and software necessary to access and use the website.

15.2 If you know of, or suspect, copyright infringement, please contact us at [hayden@shade-photography.com](mailto:hayden@shade-photography.com) Digital Millennium Copyright Act – Notification of Alleged Copyright Infringement. We reserve the right to remove any Content that allegedly infringes another person's copyright. We will terminate, in appropriate circumstances, users who are repeat infringers of another person's copyright. Notices regarding any alleged copyright infringement should be directed to us via email at: [hayden@shade-photography.com](mailto:hayden@shade-photography.com)

### 15.3 Filing a DMCA Notice to Remove Copyright – Protected Content

If you believe in good faith that your work has been copied in a way that constitutes copyright infringement, please provide us with a written notice containing the following information:

1. Your name, address, telephone number, and email address (if any);
2. A description of the copyrighted work that you claim has been infringed;
3. A description of where on the Website the material that you claim is infringing may be found, sufficient for us to locate the material (e.g., the URL);
4. A statement that you have a good faith belief that the use of the copyrighted work is not authorized by the copyright owner, its agent, or the law;
5. A statement by you UNDER PENALTY OF PERJURY that the information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf; and
6. Your electronic or physical signature.

15.4 Filing a Counter – Notice to Restore Content Removed from the Website If you believe that your material has been removed by mistake or misidentification, please provide us with a written counter-notification containing the following information:

1. Your name, address, and telephone number;
2. A description of the material that was removed and the location on the website (e.g., the URL) where it previously appeared;
3. A statement UNDER PENALTY OF PERJURY that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification;
4. A statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, any judicial district in

which we may be found (which includes the United States), and that you will accept service of process from the person who filed the original notice or an agent of that person; and

5. Your electronic or physical signature.

15.5 The Terms and Conditions, and the relationship between you and us, shall be governed by the laws of the United States of America. You agree that any cause of action that may arise under the Terms and Conditions shall be commenced and be heard in the appropriate court in the United States of America. You agree to submit to the personal and exclusive jurisdiction of the courts located in the United States of America. Our failure to exercise or enforce any right or provision of the Terms and Conditions shall not constitute a waiver of such right or provision. If any provision of the Terms and Conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms and Conditions remain in full force and effect.

15.6 We may send notices to you with respect to your use of the website by sending an email message to the email address listed in your account, by sending a letter via mail to the contact address listed in your account, or by posting a note on the website when you access your account. You agree that we may provide notice to you through such means. Unless otherwise stated in the notices, the notices will become effective immediately.

15.7 No failure by us or you to exercise any rights, powers or remedies hereunder or its delay to do so will constitute a waiver of these rights, powers or remedies, and all waivers by us will be in writing. The single or partial exercise of a right, power or remedy will not prevent its subsequent exercise or the exercise of any other right, power or remedy.

15.8 The section headings are for convenience only and will not be used to interpret this Agreement.

15.9 This Agreement will be binding upon and will insure to the benefit of SHADE PHOTOGRAPHY and its successors and assigns. This Agreement, together with any rules, policies, or additional terms associated with this website, constitutes the entire understanding and agreement of the parties respecting the subject matter of this Agreement.

15.10 Any provision of this Agreement which by its nature is intended to survive the termination of this Agreement will survive such termination.

15.11 General Contact Information. For questions regarding this website please complete the contact form found [here](#).

## **16. GALLERY**

By purchasing a photographic print, the client expressly agrees to the following provisions:

When a print is sold by SHADE PHOTOGRAPHY, reproduction rights and other copyright rights are not included, nor conveyed or authorized by the sale and thus the client obtains no such rights by virtue of the transaction. Risk and responsibility for any damage or loss of the print(s) are passed to the client upon the transfer of ownership.

The ownership of the print will be transferred to the client only if the full payment of the price stated on the invoice has been received. In the case of a purchase delivered by hand, the transfer of ownership is concluded by the signature of the movement order sheet. In the case of a delivery, the transfer of ownership is concluded at the date listed on the delivery slip. Once the ownership has been transferred, the client has 48 hours to report any potential defect of the print purchased. After this time, the print will be considered as being accepted as such by the client, and Magnum Photos will not accept any claim. Photographic prints are inherently light sensitive and are therefore subject to natural processes that can change their appearance. These changes happen in the course of ordinary use and can manifest in various ways such as color shifts and fading, for which SHADE PHOTOGRAPHY cannot be held responsible. To ensure a better conservation of the print, we advise the client to respect the usage rules in this area, notably not exposing the print to direct light, temperature changes, and to an incompatible humidity level. It is also recommended to frame the print with an anti-UV glass.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND WILL BE BOUND BY THE TERMS AND CONDITIONS. YOU FURTHER ACKNOWLEDGE THAT THIS AGREEMENT REPRESENTS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND US AND THAT IT SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT ORAL OR WRITTEN AND ANY OTHER COMMUNICATION BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

## CONTACT INFORMATION

Questions about the Terms of Service should be sent to  
[hayden@shade-photography.com](mailto:hayden@shade-photography.com)