

HANAHOE PHOTOGRAPHY

TERMS OF SERVICE

19 September 2018

The parties to this Agreement are Thomas Hanahoe of 46 Ivel Gardens Biggleswade Bedfordshire SG18 0AN United Kingdom (trading as Hanahoe Photography <https://www.hanahoephotography.com>) (the "Image Provider") and you (the "Image Purchaser").

BACKGROUND

- (A) The Image Provider has created both Printed Images and Digital Images.
- (B) The Image Purchaser wishes to receive Images and for suitable consideration the Image Provider is willing to provide them to the Image Purchaser on the terms of service set out in this Agreement.
- (C) This Agreement refers separately to the sale of Printed Images (Clause 2) and/or the Licence of Digital Images (Clause 3).

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Agreement means this agreement between the Image Purchaser and the Image Provider.

Copyright means all copyright and rights in the nature of copyright subsisting in the Image in any part of the world to which the Image Provider is or may become entitled.

Digital Image means the digital image which the Image Purchaser selects to licence in the check-out page of the Website.

Effective Date means the date of the Invoice provided by the Image Provider to the Image Purchaser.

Image means the Printed Image or the Digital Image provided by the Image Provider to the Image Purchaser.

Invoice means the invoice provided by the Image Provider to the Image Purchaser that may include without limitation details of the Image selected by the Image Purchaser the medium the Image will be used in and the Licence Fee to licence the Digital Image and/or the Purchase Fee to purchase the Printed Image. The terms contained in the Invoice shall be incorporated into this Agreement and all references to the Agreement shall include those terms.

Licence means the licence granted by the Image Provider to the Image Purchaser the details of which are contained within the Invoice.

Licence Fee means the fee payable by the Image Purchaser to the Image Provider with respect to the Licence granted by the Image Provider to authorise the Image Purchaser to make use of the Digital Image as described within the Invoice.

Printed Image means the printed image which the Image Purchaser selects in the check-out page of the Website to purchase as a fine art print.

Purchase Fee means the fee payable by the Image Purchaser to the Image Provider with respect to the purchase of a Printed Image.

Website means <https://www.hanahoephotography.com>.

1.2 Clause and paragraph headings shall not affect the interpretation of this Agreement.

1.3 References to clauses are to the clauses of this Agreement

1.4 Unless the context otherwise requires words in the

singular shall include the plural and in the plural shall include the singular.

2. SALE OF PRINTED IMAGES

2.1 The Image Provider agrees to provide to the Image Purchaser Printed Images at the price stated in the Invoice.

2.2 The Printed Image will be provided as a fine art print by the Image Provider to the Image Purchaser free of Copyright mark on the surface of the Printed Image.

2.3 The Printed Image will consist solely of the fine art print.

2.4 The Purchase Fee for the Printed Image will be made in full by the Image Purchaser on or before the Effective Date.

2.5 The Printed Image will be posted by the Image Provider via 1st Class Royal Mail sent to the postal address provided by the Image Purchaser in the check-out page of the Website.

3 GRANT OF LICENCE

3.1 The Image Provider agrees to grant to the Image Purchaser a non-exclusive Licence to reproduce the digital Image solely in the manner and for the purposes set out in the Invoice.

3.2 The Image Purchaser agrees not to sub-licence nor re-assign the Licence.

3.3 The Digital Image will be delivered by the Image Provider via an email message sent to the email address provided by the Image Purchaser in the check-out page of the Website.

3.4 The Invoice for the Digital Image will be delivered by the Image Provider via an email message sent to the email address provided by the Image Purchaser in the check-out page of the Website and will also be posted by the Image Provider via 1st Class Royal Mail to the postal address provided by the Image Purchaser in the check-out page of the Website.

3.5 Use of the Digital Image is strictly limited to the restrictions specified in the Invoice.

3.6 In exercising the rights granted under the Licence the Image Purchaser must ensure any notice of Copyright is not removed from any place where it is placed on or embedded in the Digital Image.

3.7 The Digital Image provided by the Image Provider to the Image Purchaser will contain a Copyright watermark at the bottom left hand corner of the Image which will read "Thomas Hanahoe©All Rights Reserved" and the Image

Purchaser shall procure that this Copyright watermark shall not be removed or altered in any way.

3.8 Digital Images may be cropped or otherwise edited by the Image Purchaser for technical quality provided that the Copyright referred to in clauses 3.6 and 3.7 is not removed and the original context setting and the truth of the Digital Image are not altered.

3.9 The Image Purchaser acknowledges and agrees that all Copyright and rights in the nature of copyright subsisting in any part of the world in the Digital Image or any image derived from the Digital Image shall vest in the Image Provider.

3.10 The Licence shall commence on the Effective Date and shall continue unless terminated earlier in accordance with clause 7 until the third anniversary of the Effective Date when it shall expire automatically without notice.

4. PROTECTION OF THE COPYRIGHT

4.1 The Image Purchaser shall immediately notify the Image Provider in writing giving full particulars if any of the following matters come to attention of the Image Purchaser:

- (i) any actual suspected or threatened infringement of the Copyright;
- (ii) any claim made or threatened that the Image infringes the rights of any third party; or
- (iii) any other form of attack charge or claim to which the Copyright may be subject.

4.2 In respect of any of the matters listed in clause 4.1:

- (i) the Image Provider shall at his absolute discretion decide what action to take if any;
- (ii) the Image Provider shall have exclusive control over and conduct of all claims and proceedings;
- (iii) the Image Purchaser shall not make any admissions other than to the Image Provider and shall provide the Image Provider with all assistance that he may reasonably require in the conduct of any claims or proceedings; and
- (iv) the Image Provider shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for his own account.

4.3 The provisions of sections 101 and 101A of the Copyright Designs and Patents Act 1988 (or equivalent legislation in any jurisdiction) are expressly excluded.

4.4 The Image Provider warrants that:

- (i) he is the sole legal and beneficial owner of and owns all the rights and interests in the Copyright;
- (ii) he has not licensed or assigned the Copyright; and
- (iii) the Image is his original work and has not been copied wholly or substantially from any other source.

4.5 The Image Purchaser shall not do or omit to do anything to diminish the rights of the Image Provider in the Copyright or the Image nor assist any other person to do so either directly or indirectly.

5. MORAL RIGHTS

The Image Provider being the sole author of the Image asserts the Image Provider's moral right under Chapter 4 of the Copyright Designs and Patents Act 1988 to be identified as the author of the Image.

6. LIABILITY INDEMNITY AND INSURANCE

6.1 To the fullest extent permitted by law the Image Provider shall not be liable to the Image Purchaser for any

costs expenses loss or damage (whether direct indirect or consequential and whether economic or other) arising from the Image Purchaser's exercise of the rights granted under this Agreement.

6.2 The Image Purchaser shall indemnify the Image Provider against all liabilities costs expenses damages and losses (including any direct indirect or consequential losses loss of profit loss of reputation and all interest penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Image Provider arising out of or in connection with:

- (i) the Image Purchaser's exercise of rights granted under this Agreement;
- (ii) the Image Purchaser's breach or negligent performance or non-performance of this Agreement including any liability claim relating to the provision of printed images provided by the Image Purchaser under Licence.
- (iii) the enforcement of this Agreement;
- (iv) any claim made against the Image Provider by a third party for death personal injury or damage to property arising out of or in connection with the Licence to the extent that the defect in the License is attributable to the acts or omissions of the Image Purchaser its employees agents sub-Image Purchasers or subcontractors.

6.3 Nothing in this Agreement shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence.

7. TERMINATION

7.1 Without affecting any other right or remedy available the Image Provider may terminate this Agreement with immediate effect by giving notice to the Image Purchaser if:

- (i) the Image Purchaser fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 90 days after being notified to make such payment;
- (ii) the Image Purchaser commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so;
- (iii) the Image Purchaser repeatedly breaches any of the terms of this Agreement in such a manner as reasonably to justify the opinion that the Image Purchaser's conduct is inconsistent with the Image Purchaser having the intention or ability to give effect to the terms of this Agreement;
- (iv) an order is made or a resolution is passed for the Image Purchaser's winding-up (other than for the purpose of effecting a reconstruction or amalgamation) or an administrator is appointed by order of the Court or a receiver and/or manager or administrative receiver is appointed or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order in respect of the Image Purchaser or the Image Purchaser is unable to pay debts.

8. CONSEQUENCES OF TERMINATION

8.1 On expiry or termination of this Agreement for any reason and subject to any express provisions set out elsewhere in this Agreement:

- (i) all outstanding sums payable by the Image Purchaser to the Image Provider shall immediately become due and payable;
- (ii) all rights and Licences granted pursuant to this Agreement shall cease;

(iii) the Image Purchaser shall cease to make any use of the Copyright save as set out in this clause;

8.2 Termination or expiry of this Agreement shall not affect any rights remedies obligations or liabilities of the parties that have accrued up to the date of termination or expiry including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

9. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10. ENTIRE AGREEMENT

10.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements promises assurances warranties representations and understandings between them whether written or oral relating to its subject matter.

10.2 Each party agrees that it shall have no remedies in respect of any statement representation assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

11. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12. SEVERANCE

12.1 If any provision or part-provision of this Agreement is or becomes invalid illegal or unenforceable it shall be deemed deleted but that shall not affect the validity and enforceability of the rest of this Agreement.

12.2 If any provision or part-provision of this Agreement is deemed deleted under clause 12.1 the parties shall negotiate in good faith to agree a replacement provision that to the greatest extent possible achieves the intended commercial result of the original provision.

13. THIRD PARTY RIGHTS

Unless it expressly states otherwise this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

14. NO PARTNERSHIP OR AGENCY

14.1 Nothing in this Agreement is intended to or shall be deemed to establish any partnership or joint venture between any of the parties constitute any party the agent of another party or authorise any party to make or enter into any commitments for or on behalf of any other party.

14.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

15. NOTICES

15.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other

case); or

(i) sent by email to the address specified in the Website or in the order summary provided by the Image Purchaser at checkout on the Website.

15.2 Any notice or communication shall be deemed to have been received

(i) if delivered by hand on signature of a delivery receipt

(ii) if sent by pre-paid first-class post or other next working day delivery service at 9.00 am on the second business day after posting (or at the time recorded by the delivery service)

(iii) if sent by email at 9.00 am on the next business day after transmission.

16. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that the Image Provider may have the Image Purchaser acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Image Purchaser. Accordingly the Image Provider shall be entitled to the remedies of injunction specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

17.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.