



Appointment

The Client named in the Quote/Estimate appoints Elliot Ramsay Photographer (ABN 84404258852 (ER) to provide the Services for the Term.

Provisional bookings, or "holds", maybe extinguished if ER does not receive a signed copy of this Agreement within seven business days of the date of the Quote/Estimate.

Commencement Date

The commencement date of ER's Services is the beginning of the Term as set out in the quotation provided to the Client (**Quote/Estimate**) and attached to a copy of these Terms of Engagement (**Terms**).

Term

This Agreement starts on the commencement date and shall end on completion of all Services stated in the Quote/Estimate or any further Quote/Estimate as separately agreed between the parties in writing.

Services

The Parties agree that the Services to be provided by ER to the Client are the services stated in the Quote/Estimate. The Client agrees that it will at its own cost provide ER with the materials, documents, approvals and instructions ER reasonably requires from time to time to deliver the Services in accordance with these Terms and the Quote/Estimate(together, the **Agreement**).

Fees

The Client will pay ER the fees in accordance with the Quote/Estimate, any further accepted Quote/Estimate or as otherwise agreed between the parties (**Fees**).

In the event that the Client requires services in addition to the Services, the Parties shall discuss any required increase in fees and delivery timings, to be confirmed in writing. Additional services will then be Quote/Estimated for Client approval.

A deposit of 35% of the Quote/Estimate is required to confirm your booking and is payable prior to commencement, unless an alternative arrangement is agreed in writing by ER.

Unless GST (defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) is expressly included, the fees expressed to be payable for any supply made under or in connection with this Agreement do not include GST and GST will be payable by the Client.

Payment terms for Services performed are due 14 days from date of invoice unless stated otherwise in the attached Quote/Estimate.

Interest will be charged on any part of the Fees which are not paid when due under this Agreement at 10% calculated monthly on the outstanding balance. The Client is liable for all debt collection costs, solicitor fees and any out of pocket expenses incurred in respect of overdue payments.

Cancellations

ER will work with the Client to action any required changes or cancellation to the Services (or part of the Services). All changes and cancellations must be agreed by ER in writing and are subject to the permissibility of such change or cancellation within the terms of any contracts between ER and any relevant third party.

Where possible, ER will notify the Client of any cancellation charges (as applicable) and non-cancellable third party costs prior to alteration or cancellation and ER will make all possible changes or cancellations as soon as reasonably practicable to minimise the costs to the Client after receipt of the Client's notice of cancellation.

- (a) If the Client has engaged ER to provide Services on a specified date, the Client may notify ER in writing (during normal business hours) that the Client does not require the Services to be provided on that date (the cancellation).
- (b) If notification of the cancellation is provided outside of normal business hours, it is deemed to have been provided at the commencement of the following business day.
- (c) Except as set out in paragraph (d) if the cancellation is made:
 - (i) for bookings with a Services duration exceeding one day, the notice period for a cancellation must correspond to the full duration of the booking plus 72 hours, for no Fee to be payable by the Client (eg. a booking for 5 full days must be cancelled 8 business days before the commencement of the booking), otherwise a half or full fee (as appropriate) will be payable to ER as set out in sub-paragraphs (ii) to (iv) below);

- (ii) more than 72 hours before the day on which ER has been engaged to provide the Services, the Client must reimburse ER for any expenses or third party cancellation fees incurred by ER in preparation for provision of the Services;
 - (iii) between 72 and 48 hours prior to the day on which ER has been engaged to provide the Services, the Client must pay 50% of the Fee set out in the Quote/Estimate; and
 - (iv) less than 48 hours of the time at which ER has been engaged to provide the Services, the Client must pay the Fee in full.
- (d) If a cancellation is due to bona fide adverse weather conditions, the following shall apply:
- (i) the Services shall be rescheduled to the next available date(s) decided by mutual agreement between the parties (the **Rescheduled Date**);
 - (ii) if the Rescheduled Date is subject to a cancellation, the Services shall be rescheduled to the next available date(s) decided by mutual agreement between the parties (**Second Rescheduled Date**) and ER may invoice the Client for 50% of the Fee as a non-refundable booking fee; and
 - (iii) if the Second Rescheduled Date is subject to a cancellation and the Client does not agree to a third mutual agreed rescheduled date, the Client must pay the remaining 50% balance of the Fee in full.
- (e) If the cancellation is made while ER is providing Services to the Client, including as a result of adverse weather conditions which in the reasonable opinion of ER endangers the life of ER personnel or any other person, or renders it logistically impossible for ER to perform the Services, the Client must pay the Fee in full.
- (f) Any amount payable under this section must be paid in accordance with the payment terms of the Agreement.

Third Party Costs & Out Of Pocket Expenses

ER may incur third party Expenses as stated in the Quote/Estimate or as otherwise approved by the Client. The Client will pay any and all third-party expenses payable by ER to third parties for the provision of the applicable part of the Services within 7 days from date of invoice unless stated otherwise in the Quote/Estimate.

The Client agrees that, where necessary, it may be requested to pay third party Expenses in part or full prior to order by ER and commencement of that part of the Services.

Such third-party Expenses include any production (including, for example; assistant(s) and crew(s) location fee(s), location permit, talent fees, set design and props, digital, print, TVC, equipment hire, or other) in which case 50% of costs, expenses and other amounts associated with the production job will be invoiced not less than 14 days prior to the production work commencing. The Client agrees to pay this invoice within five (5) days from the date of receipt.

The Client will pay for all additional out of pocket expenses and disbursements incurred by ER during the provision of the Services and not covered in the Quote/Estimate (if any) if otherwise previously approved by the Client or if the out-of-pocket expense was reasonably incurred by ER having regard to the nature of the Services.

Intellectual Property

Your material. All right, title and interest in all intellectual property rights (including copyright) in material provided to ER by you or at your direction for the purposes of this Agreement (including without limitation your logos, trade marks or other indicia, artwork, documents, equipment, computer programs, information, data and customer lists) will remain or be vested in you or the party who owns this material.

Material created by ER. ER is the owner of the intellectual property created by ER in the course of the Services, including but not limited to the photographs delivered under the Services (**Photographs**), digital or electronic material, transparencies, negatives and prints relating to the Photographs. ER retains all rights and ownership in the Photographs and any negatives (or digital equivalent) from which the Photographs are derived. No interest in the negatives (and/or digital equivalent) is assigned or licensed to you by this Agreement, unless expressly specified in the Quote/Estimate. Unless otherwise agreed in writing, ER is not responsible for storing or archiving the Photographs. You will not own any material that is owned by ER and developed independently of the Services but ER will grant you a non-exclusive licence to use this material to the extent necessary to obtain the benefit of the Services. You must provide the Credit as set out in these Terms for any commercial use of the Photographs.

Third party material. In order to provide the Services, we may be required to source and licence material that is owned by a third party (usually identified in the Quote/Estimate) that may include images, photographs, music, content, talent / personality rights, third party software or public domain content. In such circumstances the intellectual property rights / use rights in such material is retained by the originator and is released for use by you on the basis of a use licence that will often limit use in terms of time, territory and media. Accordingly, we will be unable to transfer ownership of this third-party material to you and you acknowledge and agree that there may be stated, inherent or industry practice based limitations upon the use of this third party material. The ability for us to use such third-party material and the cost must be approved by you in the Quote/Estimate or otherwise in writing.

Pitch material. Any unused drafts, concepts or proposals shall remain the property of ER and shall not be used by the Client without ER's prior written consent.

Promotional Uses. ER reserves the right to use any materials it creates for the Client for marketing purposes, including portfolio and award submissions.

Licensed Use of Photographs

- (a) In consideration of the full payment of the Fee and Expenses by the Client, ER grants the Client the right to use the Photographs for the uses set out in the Quote/Estimate (**Use**) throughout the Territory for the Term (the **Licence**). The Licence granted is not effective until the Client has signed this Agreement and the Client has paid the Fees and Expenses in full.
- (b) ER asserts all moral rights attached to the Photographs and the Client shall NOT edit, change, add to, take from, alter or otherwise amend the Photographs without ER's prior written consent.
- (c) Notwithstanding the Licence granted under this Agreement, ER reserves the right to use the Photographs during the Term for the purposes of promoting and marketing ER, including but not limited to displaying the Photographs in ER's portfolio, on ER's website and in galleries or in photography competitions. ER expressly reserves all other rights subsisting in the Photographs not specifically granted in this Agreement.
- (d) In the event that the Client wishes to extend the Use, Territory or the Term of this Agreement, the Parties will negotiate a further use fee in good faith at the time.

Credit

The Client must provide the following credit on any use of the Photographs unless otherwise agreed in writing by ER:

"Photo: Elliot Ramsay"

Print Sales

Please contact Elliot Ramsay Photographer if you wish to purchase any photographic prints. Please note all prints are made to order and the up-front purchase price is non-refundable.

Prints are limited edition unless otherwise noted. In the instance whereby purchaser of a print is located outside Australia, if the destination country applies additional taxes, custom duties and fees, these are the sole responsibility of the purchaser. ER is under no obligation to accept a return of a photographic print where a customer has declined to pay such taxes, duties or fees. The customer is responsible for contacting the relevant customs office in their country of domicile for further information.

ER retains all copyright in the subject matter of any photographic prints without exception.

ER reserves the right to license any photograph sold as a photographic print (limited edition or otherwise) without exception for any commercial or non-commercial purpose.

Confidentiality

A party must not, without the prior written approval of the other party, disclose or use any information of the other party that by its nature or the circumstances of its disclosure could reasonably be expected to be regarded as confidential (including the terms of this Agreement) otherwise than in accordance with this Agreement.

A party will not be in breach of this clause in circumstances where it is legally compelled to disclose the other party's confidential information or where the confidential information was in the public domain at the time of its provision, became part of the public domain after its provision otherwise than through a disclosure by the other party or any person to whom the other party has disclosed that information, is independently developed by the other party without the use of the disclosing party's information, or is or came lawfully into the possession of the other party otherwise than as a result of a disclosure in breach of an obligation of confidence.

Each party is responsible for and must procure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement or the Quote/Estimate, do not make public, use or disclose the other party's confidential information. A party may however disclose the terms of this agreement to its related companies, solicitors, auditors, insurers and accountants.

These obligations of confidentiality survive termination of this Agreement or a Quote/Estimate.

Dispute Resolution

The Parties agree that in the event a dispute arises the following process will apply:

- (a) The aggrieved Party will inform the other Party of the dispute in writing.
- (b) The Parties will arrange to meet within 10 days and will take all reasonable steps to attempt to resolve the dispute.
- (c) If the dispute is not resolved, the Parties may take such action or steps as they deem necessary.

Termination

Either Party may terminate this Agreement immediately upon notice in the event that the other Party is subject to an insolvency event.

Immediately upon termination:

- (a) all rights in the Photograph/s and/or work(s) the product of the Services revert to ER;
- (b) the Client must return all physical property (including but not limited to the Photographs and any equipment); and
- (c) all Fees and Expenses owed to ER under this Agreement must be paid in full.

All third-party costs and expenses incurred up to date of termination must be paid in full. If ER has contractually committed to a third party with the approval of the Client, then the Client must pay all costs and expenses associated with that third party engagement regardless of the date of termination.

Warranties

The Client warrants and represents that:

- (a) the use by ER of any materials or information provided by the Client in accordance with this Agreement will not infringe the rights (including intellectual property rights) of any third party or applicable laws (including without limitation, Spam Act 2003 and the Privacy Act 1988);
- (b) supplied Client materials or information will not contain any information, subject matter or content that is: illegal; contrary to any applicable laws, applicable industry codes; false, misleading or deceptive or likely to mislead or deceive; and
- (c) supplied Client materials or information will not contain any misrepresentations or suggestion that any entity has the approval or sponsorship of any other entity which it does not have.

ER warrants and represents that it will perform the Services with due care and skill and that, except to the extent advised to the Client, the provision of the Services and their use by the Client will not infringe the rights (including intellectual property rights) of any third party.

Liability and Indemnity

In no event will ER or its directors, employees, officers or agents, be liable to the Client for any form of loss or damage whatsoever including but not limited to consequential, indirect, incidental, or special loss or damage even if such loss or damage was in the contemplation of the parties at the date of this Agreement as a probable result of a breach of this Agreement, and including any loss of profits, loss or revenue, loss of production, loss of media, business interruption, loss of contract, loss of opportunity, loss of or unauthorised access to information, loss of reputation, loss of goodwill, loss of data, the cost of engaging an alternative service provider and similar loss or damage.

In no event will ER or its directors, employees, officers or agents, be liable to the Client for an amount in excess of the total Fee actually received by ER from the Client for the Services less third party costs and out-of-pocket expenses and disbursements.

The Client acknowledges that ER makes no warranties in respect of the success of the Services, in respect of the Client's business or commercial performance or otherwise of any media, marketing communications channel, marketing or advertising campaign, promotion or advertisement.

The Client will indemnify and hold harmless ER and its affiliates, related entities, servants, employees, officers and agents in respect of any loss, costs (including reasonably incurred legal fees and costs on a full indemnity basis), expense, damages or liability which ER suffers or incurs arising directly from any breach of a warranty given by the Client under this Agreement, or any warranty given by the Client under this agreement not being complete, true or correct.

General

This Agreement is governed by the laws of Western Australia, Australia and the parties submit to the non-exclusive jurisdiction of the courts there.

Any variation of this Agreement is only valid if it is in recorded in writing and signed by all the parties (and attached hereto).

In providing the Services to the Client under this Agreement, ER is acting in the capacity of independent contractor. This Agreement does not constitute any partnership, trust, agency, joint venture or employment relationship between the parties.

Interpretation

- (a) To the extent of any inconsistency between the Quote/Estimate and these Terms, the terms of the Quote/Estimate prevail to the extent of the inconsistency.
- (b) Any additional services or variation to the Quote/Estimate must be agreed by both parties in writing.
- (c) Capitalised terms in the Quote/Estimate have the same meaning as those defined in these Terms, unless otherwise expressly provided in this Quote/Estimate.

Next steps

We recommend you carefully read the Quote/Estimate and these Terms. Whilst your continuing instruction on this matter will constitute your acceptance ER would be grateful if you could please sign below and return to us.

The appointment of Elliot Ramsay Photographer (ABN 84404258852) is agreed.

For and on behalf of _____
(insert Client legal name)

Signature of Authorised Representative: _____

Name of Authorised Representative: _____

Date: _____