



Up&Up Standard Terms and Conditions

1. Clarification:

- 1.1. Please read these terms and conditions carefully. By instructing us you agree to these booking terms and conditions. References to "us", "we", "our" "Photographer" and "Up&Up" in these terms and conditions shall mean Up+ Up Limited – trading as Up&Up Photography & Film.
- 1.2. These terms and conditions are subject to change without notice. You agree you will be bound by any subsequent terms and conditions.

2. Instructions must be in writing:

- 2.1. The Client must ensure that all their instructions and expectations (or variations of such) regarding the Booking or Order are agreed in writing prior to the shoot.
- 2.2. Every reasonable effort will be made to take requested pictures or videos, but no specific pose or photograph can be promised. Any lists or images of inspiration supplied will be used for creative planning purposes only. Photographic & Videographic Works determined by the photographer to be substandard or duplicated may be edited out.
- 2.3. Unless agreed upon in advance, we shall be the exclusive drone photographer retained for the event. We may bring one assistant at our discretion.
- 2.4. Event guests may take photos and videos, but it is the responsibility of the Client to prevent event guests from interfering with our duties.

3. Ownership:

- 3.1. Unless otherwise agreed in writing, Up&Up and the Client retain all rights, title and ownership in all Photographic or Videographic Works jointly. Up&Up and the Client both agree to grant the other a perpetual and irrevocable right to reproduce, publish and use the Photographic or Videographic Works.
- 3.2. If the Photographic or Videographic Works have been produced for an advertiser, the works may only be used for the creative works of that advertiser.
- 3.3. Except as otherwise agreed in writing or contemplated by these terms and conditions the Client cannot sell the Photographic or Videographic Works or use them for commercial purposes, such as in magazines or other advertising, and they cannot alter the images in any way without permission from us, except to reduce to a smaller size for web. The Client further agrees not to supply images to any professional third parties without our prior written consent, which shall not be unreasonably withheld or delayed.
- 3.4. If posting the Photographic or Videographic Works on any website, including but not limited to Facebook and Instagram, you must give credit to Up&Up Photography & Film, with a link to www.upandup.co.nz, @upandup_nz or #Up&Up.
- 3.5. Unless otherwise agreed, Up&Up always retains the right to use the Photographic or Videographic Works in any manner at any time and in any part of the world in its sole discretion, including for the purposes of:
 - 3.5.1. Entering the Photographic Works into photographic competitions or awards and for their use in any material published in connection with promoting those competitions or awards;
 - 3.5.2. Advertising or otherwise promoting the Up&Up's Photographic Works;
 - 3.5.3. Submitting the Photographic Works for display at art galleries or other premises; and
 - 3.5.4. Using the Photographic Works for any other purpose within Up&Up's business activities.
- 3.6. The Client waives any right to inspect or approve the Photographic and Videographic Works, finished version(s) incorporating the photograph(s) and video(s), or the use to which it may be applied, including written copy that may be created and appear in connection therewith.
- 3.7. Up&Up will follow its usual backup procedure upon the completion of Photographic or Videographic Works. Up&Up will not be liable under any circumstances if unable to produce backups upon the request of the Client. It is the Client's responsibility to ensure the images are copied to new technology and safely backed up.

4. Estimates of Fees:

- 4.1. Any estimates of fees supplied by Up&Up to the Client in respect of any proposed or active Engagement are indicative and do not comprise fixed price quotations. However, Up&Up undertakes to discuss any adverse variances of expected fees against estimated fees with the Client either within a reasonable time after the likelihood of a variance is known to Up&Up or at least prior to issuing an invoice.
- 4.2. All quotes and estimates are valid for 7 days and are exclusive of GST, disbursements, expenses and third party consultancy fees (if any). We reserve the right to withdraw any quote or estimate or vary any quote or estimate at any time before the Client accepts the quote or estimate.
- 4.3. Where disbursements may be significant, a separate estimate of disbursements may be prepared at the Client's request.

- 4.4. Disbursements are typically recharged at cost incurred. Where external partners are required by Up&Up to book activities such as flights, hotels, hire cars and the like then a 5% administration fee will be added to the disbursement charge.

5. Fee and Cost Charges:

- 5.1. Fees and disbursements charged by Up&Up will attract GST.
5.2. Travel by car will be charged to the Client at the current rate recommended by the Inland Revenue Department or at the discretion of Up&Up. Generally where travel incurred on behalf of the Client is either outside a 20 kilometre radius of Auckland or where travel exceeds 40 kilometres per day.

6. Cancellation Charges:

- 6.1. In the event of a short notice cancellation we will aim to redeploy resources elsewhere however should this not be possible then we may apply cancellation charges as follows. Less than 10 working days' notice 100% of fees, greater than 10 working days but if less than 20 working days' notice then 50% of fees or the loss of the deposit at the discretion of Up&Up.
6.2. If the Client cancels the Booking which is for a wedding, the following shall apply:
6.2.1. If the Booking is cancelled within 12 weeks of the date on which the Booking is to take place, Up&Up shall retain the total deposit paid by the Client;
6.2.2. If the Booking is cancelled within four weeks of the date on which the Booking is to take place, the Client shall be liable to pay 100% of the total amount payable (including the deposit (if any)) for the Booking to Up&Up.

7. Payment:

- 7.1. The Client shall pay amounts invoiced by Up&Up within 5 days' of the date of the invoice relating to such services.
7.2. Up&Up will charge a deposit at the time a Booking is made, which shall be invoiced in advance of the event. The quantum of the deposit will be determined by Up&Up in its sole discretion (including but not limited to factors, such as the type of engagement, the proximity to the date of the event, to hold the date, reconnaissance of the site and check any air traffic restrictions). Until the invoiced deposit is paid your Booking is not reserved and Up&Up may be engaged by another client.
7.3. The final invoice is payable within 5 days of receipt and is required before the Photographic or Videographic Works are released to the Client. You agree that Up&Up may withhold Photographic and Videographic Work until all monies owing to Up&Up are paid in full.
7.4. Late payment of all fees, expenses or amounts payable by the Client shall constitute a default. Up&Up may in addition to any other right charge the Client interest at a rate of 15% per annum (calculated on a daily basis) on all overdue amounts. The Client will be liable for default interest on overdue amounts from the date payment falls due until the date of payment at the rate set out in this clause and in addition any costs and expenses (including legal and debt collection costs) resulting from any actions taken by Up&Up to recover the debt.
7.5. Additional payment terms are as stated on invoices.
7.6. Payments are payable by direct credit to Up&Up's bank account.

Up+up Limited
Kiwibank
Queen Street, Auckland
Account No: 38-9019-0355240-00.

8. Colour Variation:

The Client acknowledges that Photographic Works may fade or discolour over time due to the inherent qualities of materials used. The Client releases Up&Up from any liability for any claim based upon fading or discolouration.

9. Weather:

- 9.1. Up&Up's operations are subject to favourable weather conditions and the decision to undertake the agreed operation rests solely with Up & Up's pilot on the day.
9.1.1. We do not fly in any level of precipitation.
9.1.2. We will exercise discretion whether or not to fly when wind speeds are above 15 knots. We are not obliged to fly when wind speeds are above 15 knots.
9.2. Should weather impact a job we will do our best to find a revised day to shoot where possible. Should this not be possible and Up&Up have arrived on site but are unable to shoot due to the weather then 50% of our fee remains payable.
9.3. We are not responsible for compromised coverage due to causes beyond our control such as other people's camera or flash, weather conditions, schedule complications, rendering of decorations, or restrictions of the venues. The Photographer is not responsible for

existing backgrounds or lighting conditions, which may negatively impact or restrict the photography coverage. We shall carry out this assignment with due and professional diligence.

- 9.4. There are other elements beyond the Photographer's control including faulty material, equipment failure, damaged or loss of memory cards in transit between the studio and professional laboratories employed by us. In the event elements beyond our control result in an incomplete production, then our liability shall be limited to the fees paid to us by the Client. It is our top priority and all measures are taken that all risks are minimised.

10. Termination:

- 10.1. Up&Up may terminate the Booking or Order at any time by notice to the Client. Termination shall not prejudice or affect the accrued rights or claims of Up&Up.
- 10.2. In the event Up&Up terminates the Booking or Order, Up&Up will endeavour to provide the Client with an alternative date and time for the Booking or Order or suggest an alternative supplier.
- 10.3. Up&Up will not be liable for any loss, damage, claims, costs or expenses of any kind whatsoever arising out of or in any way connected with Up&Up's termination of the Booking or Order.

11. Aviation Rules:

Up&Up are bound by the rules under Part 101 of the New Zealand Civil Aviation Rules and will fly accordingly. This includes, but is not limited to, no night flying, no flying over property without permission and obeying height restrictions. This must be discussed between the Client and Up & Up's Pilot prior to take off.

12. Indemnity:

- 12.1. The Client warrants that it has the full authority to engage Up&Up to provide its services. The Client undertakes to indemnify the Photographer for any loss, damage, or expense (including legal fees on a solicitor client basis) suffered or incurred as a result of any breach by the Client of these conditions or in recovering any moneys due and such loss, damage or expense shall be moneys due for the purposes of these terms and conditions.

13. Client Confidentiality:

- 13.1. The Client must advise the Photographer as to whether any material or information communicated to him/her is of a confidential nature. The Photographer will keep confidential material or information communicated to him/her in confidence for the purposes of the photography, except where it is reasonably necessary to enable the Photographer to carry out his/her obligations in relation to the Booking or Order.

14. Indemnity for Breaches of Intellectual Property:

- 14.1. The Client shall fully indemnify the Photographer in respect of any claims, costs, or expenses arising out of any illegal or defamatory Photographic Works produced for the Client or any infringement of an intellectual property right of any person.

15. Photographer not liable for losses:

- 15.1. Except as provided for by the Consumer Guarantees Act 1993 the Photographer shall not be liable for:
- 15.1.1. Any loss or damage arising by reason of any delay in the completion of the Photographic Works;
 - 15.1.2. Any loss of profits;
 - 15.1.3. Any indirect or consequential loss of whatever nature; or
 - 15.1.4. Any loss resulting from any errors or omissions arising from an oversight or a misinterpretation of the Client's verbal instructions arising directly or indirectly from any breach by the Photographer of any of its obligations under the Booking or Order or from any cancellation of the Booking or Order or from any negligence on the part of the Photographer.

16. Liability of Photographer Limited:

- 16.1. The Photographer's liability to the Client for any and all costs, loss or damage suffered by the Client, however caused and whether arising in contract, tort or otherwise (including negligence), or arising out of or connected with the performance or failure of performance of photographic services by the Photographer, except where provided to the contrary by the Consumer Guarantees Act 1993, shall not exceed the full value of the payments made by the Client under the Booking and/or Order agreements.
- 16.2. We shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever (including any loss of revenue, profits, goodwill, business or anticipated business), whether or not that loss was, or ought to have been, contemplated by us.
- 16.3. Up&Up holds insurance policies (including, but not limited to public liability and unmanned aerial policies) to cover such insurable risks as may reasonably arise in connection to its contract with the Client. Up&Up may supply to the Client, upon request by the Client, a copy of its Certificate of Currency.

17. Force Majeure:

- 17.1. Neither the Client nor the Photographer shall be liable for any loss or damage arising directly or indirectly due to an act of God, fire, armed conflict, labour disputes, civil commotion, intervention of a government, accidents, interruption to transportation, or any other cause outside the Photographer's control, unless otherwise stated.

18. Clients in trade:

- 18.1. To the extent that the Photographic and Videographic Works are both supplied and acquired "in trade" for the purposes of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, and the parties are both "in trade" for the purposes of those Acts, the parties agree that:
- 18.1.1. the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 shall not apply to these terms and conditions; and
- 18.1.2. it is fair and reasonable for the parties to contract out of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 in accordance with this clause 17.1.

19. Health and Safety:

- 19.1. Safety is of paramount importance to us at Up&Up, to keep all our personnel safe.
- 19.2. You must take all practicable steps to ensure there is no hazard at the event location.
- 19.3. We reserve the right to refuse to fly or perform services where we form the reasonable opinion that performing the services could potentially give rise to a health and safety risk and potentially endanger any of our directors, employees, agents, or contractors.

20. Privacy Act:

- 20.1. The Client irrevocably authorises Up&Up to collect, retain and use personal information about the Client (including but not limited to the Client's full name, address, phone number, email address and payment information) for administering the services to the Client and enforcing Up&Up's rights under these terms and conditions and marketing any services provided by Up&Up.
- 20.2. Where the Client is an individual and the information is readily retrievable (and subject to payment of a reasonable charge), the Client has the right to access any personal information about the Client held by Up&Up and the right to request Up&Up to correct any incorrect information about the Client held by Up&Up.
- 20.3. Up&Up will maintain reasonable security safeguards to protect the Client's personal information and take reasonable steps to ensure the Client's personal information is not disclosed to an unauthorised person or entity.
- 20.4. Up&Up will retain the Client's information for so long as is reasonably necessary to fulfil the purposes for which it was collected, including for the purposes of satisfying any legal, regulatory, tax or accounting requirements and for marketing purposes.

21. Dispute Resolution:

- 21.1. If any dispute arises in connection with the Booking or Order or these terms and conditions, directors or senior representatives of the parties or individuals with authority to settle the dispute will, within 5 working days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation. To initiate the mediation a party must give notice in writing ("**Dispute Notice**") to the other party to the dispute requesting mediation. The mediation will start not later than 20 working days after the date of the Dispute Notice. No party may commence any court proceedings in relation to any dispute arising out of these terms and conditions until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation. Nothing in this clause will prevent a party from obtaining urgent interlocutory relief in respect of a breach or suspected breach of these terms and conditions.

22. Definitions:

- 22.1. **Booking:** Includes appointments made for a sitting, viewing and any other meeting where the Photographer has set aside specific time to meet with or do work for the Client.
- 22.2. **Client:** Means the client listed on the Booking or Order agreement.
- 22.3. **Licence:** Is a right granted by the Photographer to the Client to use the copyright works of the Photographer on the terms set out above.
- 22.4. **Order:** Includes an order placed by the Client for the production of Photographic Works, an invoice or statement.
- 22.5. **Photographer:** Means Up+Up Limited, its directors, employees, agents and contractors, including the photographer and where the context requires may include, the studio, photographic company, employees or sub-contractors.
- 22.6. **Photographic & Videographic Works:** Includes photographic prints, transparencies, negatives, digital images, RAW video files, and completed videos created by us. References to Photographic Works or Videographic Works shall be references to Photographic & Videographic Works, as applicable.