

## TERMS AND CONDITIONS OF USE

**Last Updated: 12/29/2024**

The following Terms and Conditions of Use ("Terms") are entered into by and between You and Sweet Whimsy Photography ("Company," "we" or "us").

These Terms, together with our Privacy Policy, Disclaimer, and any other documents expressly incorporated by reference, govern your use of the website [sweetwhimsyphotography.com](http://sweetwhimsyphotography.com) and any subdomains ("Website"), including all materials, resources, information, and services on the Website, whether as a guest or registered user.

Your access to and use of the Website is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users, customers, and others who access or use the Website.

**By accessing or using the Website you agree to be bound by these Terms, without modification, and acknowledge reading them. If you disagree with any part of the Terms, you may not access the Website.**

### PRIVACY POLICY

Your use of the Website is also subject to our Privacy Policy [[Link to Privacy Policy](#)]. Please review our Privacy Policy, which also governs the Website and informs users of our data collection practices. Your agreement to the Privacy Policy is hereby incorporated into these Terms.

### NO USE BY MINORS

To access or use the Website, you must be 18 years of age or older and have the requisite power and authority to enter into these Terms. Children under the age of 18 are prohibited from using the Website.

### LAWFUL PURPOSES

You may use the Website for lawful purposes only. You agree to be financially responsible for all purchases made by you or someone acting on your behalf through the Website. You agree to use the Website and to purchase services or products through the Website for legitimate, non-commercial purposes only. You shall not post or transmit through the Website any material that violates or infringes the rights of others, or that is threatening, abusive, defamatory, libelous, invasive of privacy or publicity rights, vulgar, obscene, profane, or otherwise objectionable, contains injurious formulas, recipes, or instructions, that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any law.

## **USE OF FREE DOWNLOADABLE CONTENT**

We may make resources on this Website accessible to users in exchange for providing an e-mail address ("Gated Content"). We grant you a limited, personal, non-exclusive, non-transferable license to use the Gated Content for your own personal or internal business use. Except as otherwise provided, you acknowledge and agree that you have no right to modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of the Gated Content in any manner.

You agree that you may only use the Gated Content for your personal or internal business use. You agree that you will not sell, redistribute, or create any derivative works based upon the Gated Content and you will not offer any competing products or services based upon any information contained in the Gated Content.

## **MATERIAL YOU SUBMIT TO THE WEBSITE**

By posting, uploading, submitting, inputting, providing, or otherwise making available any artwork, photos, written works, or other media, including feedback and suggestions (collectively, "Submissions"), you grant us, our affiliated companies, and any necessary sub-licensees a worldwide, a nonexclusive, irrevocable license to use your Submission for promotional, business development, and marketing purposes including, without limitation, the right to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate, and reformat your Submission; and to publish your name in connection with your Submission.

We claim no intellectual property rights over your Submissions. You retain copyrights and any other rights you may rightfully hold in any Submissions that you submit through the Website.

You shall not upload, post, submit, input, or otherwise make available on the Website any Submissions protected by copyright, trademark, or other proprietary right without the express written permission of the owner of the copyright, trademark, or other proprietary right, and the burden of determining that any Submissions are not so protected rests entirely with you. You shall be liable for any damage resulting from any infringement of copyrights, trademarks, or other proprietary rights, or any other harm resulting from such a Submission.

By making a Submission to the Website, you represent or warrant that you own or otherwise control all the rights to your Submission described herein including the authority to use and distribute the Submission and that the use or display of the Submission as contemplated in this section will not violate any laws, rules, regulations, or rights of third parties. You agree to hold us harmless from and against all claims, liabilities, and expenses arising out of any potential or actual copyright or trademark misappropriation or infringement claimed against you arising from your Submissions.

You further grant us the right to use your Submission for the purpose of improving our Website, products, or services (and for any other purpose we deem necessary or desirable) without being obliged to pay you any compensation for our use of your Submission. We are under no obligation to post or use any Submission you may provide and may remove any Submission at any time at our sole discretion. If you do send us unsolicited ideas, such ideas will be deemed non-confidential, and we will not be required to provide any acknowledgement of their source.

## **OUR INTELLECTUAL PROPERTY**

The Website contains intellectual property owned by us, including trademarks, copyrights, proprietary information, and other intellectual property. We reserve all rights in and to our common law and registered trademarks, service marks, copyrights, and other intellectual property rights, including but not limited to text, graphics, photographs, video, design, and packages, belonging to us or to our licensors (“IP”). You may not modify, publish, transmit, participate in the transfer or sale of, create derivative works from, distribute, display, reproduce or perform, or in any way exploit in any format whatsoever any of our IP in whole or in part, without our prior written consent. We reserve the right to immediately block your access to the Website and remove you from any service, without refund, if you are caught violating this intellectual property policy.

You are granted a non-exclusive, non-transferable, revocable license to access and use the Website and the resources available for download from the Website (the “Content”) strictly in accordance with these Terms of Use.

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You will not modify, publish, transmit, reverse engineer, participate in the transfer or sale, create derivative works, or in any way exploit any of the Content, in whole or in part.

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Our name, logo, slogan, and all related names, logos, product and service names, designs, and slogans are the trademarks of our Company or of our affiliates or licensors. You must not use such marks without our prior written permission. All other names, logos, product and service names, designs, and slogans on this Website are the trademarks of their respective owners.

## **CHANGED TERMS**

We may at any time amend these Terms, including our Privacy Policy and Disclaimers. The date of the last revision will be indicated by the "Last updated" date at the top of this page. Any such changes are effective immediately upon notice to you by us posting the new Terms on this Website. We reserve the right to update any portion of our Website, including these Terms, at any time. If you continue to use our Website after we have made revisions, your continued use constitutes consent to the revised Terms, Privacy Policy, and Disclaimers.

## **NO WARRANTIES**

While we make every effort to ensure that the content on this Website is free from errors, we do not give any warranty or other assurance as to the accuracy, completeness, timeliness or fitness for any particular purpose of the content and materials on this site beyond reasonable efforts to maintain the site. To the maximum extent permitted by law, we provide our website and related information and services on an "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES, REPRESENTATIONS, OR GUARANTEES OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE) INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

## **LIMITATION OF LIABILITY**

YOU AGREE THAT UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR ANY OTHER DAMAGES ARISING OUT OF YOUR USE OF THE WEBSITE OR RESOURCES, PRODUCTS OR SERVICES AVAILABLE THROUGH THE WEBSITE.

ADDITIONALLY, WE ARE NOT LIABLE FOR DAMAGES IN CONNECTION WITH (I) ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, DENIAL OF SERVICE, ATTACK, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, OR LINE OR SYSTEM FAILURE; (II) LOSS OF REVENUE, ANTICIPATED PROFITS, BUSINESS, SAVINGS, GOODWILL OR DATA; AND (III) THIRD PARTY THEFT OF, DESTRUCTION OF, UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF YOUR INFORMATION OR PROPERTY, REGARDLESS OF OUR NEGLIGENCE, GROSS NEGLIGENCE, FAILURE OF AN ESSENTIAL PURPOSE AND WHETHER SUCH

LIABILITY ARISES IN NEGLIGENCE, CONTRACT, TORT, OR ANY OTHER THEORY OF LEGAL LIABILITY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN THE DAMAGES.

IN THOSE STATES THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR THE DAMAGES, OUR LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU EXCEED THE TOTAL PURCHASE PRICE OF ANY PRODUCTS OR SERVICES YOU HAVE PURCHASED FROM US.

### **NO GUARANTEE OF AVAILABILITY**

Your use of the Website and any associated services may sometimes be subject to interruption or delay. We reserve the right to withdraw or amend this Website and any service or material provided on the Website in its sole discretion without notice. Due to the nature of the Internet and electronic communications, we and our service providers do not make any warranty that our Website or any associated resources or services will be error-free, without interruption or delay, or free from defects in design. We will not be liable to you should our Website or the resources or services supplied through our Website become unavailable, interrupted or delayed for any reason. From time to time, we may restrict access to some parts of the Website, or the entire Website, to users, including registered users.

Information provided on the Website and any resources provided on or available for download from the Website is subject to change. We make no representation or warranty that the information provided, regardless of its source, is accurate, complete, reliable, current, or error-free. We disclaim all liability for any inaccuracy, error, or incompleteness in the information provided.

### **MALICIOUS CODE**

Although we endeavor to prevent the introduction of viruses or other malicious code ("malicious code") to our Website, we do not guarantee or warrant that our Website, or any data available on the Website, does not contain malicious code. We will not be liable for any damages or harm attributable to malicious code. You are responsible for ensuring that the process you employ for accessing our Website does not expose your computer system to the risk of interference or damage from malicious code.

### **SECURITY**

The security of your contact information is of utmost importance to us. However, you acknowledge the risk of unauthorized access to, or alteration of, your data. We do not accept responsibility or liability of any nature for any losses you may sustain as a result of such unauthorized access or alteration. All information transmitted to or from you is transmitted at your own risk, and you assume all responsibility and risks arising in relation to your use of this Website and the internet. We do not accept responsibility for any interference or damage to

your computer system that may arise in connection with your access to this Website or any outbound hyperlinks.

### **THIRD-PARTY RESOURCES**

The Website may contain links to external websites that are not provided by, maintained by, or in any way affiliated with us. We do not guarantee and are not responsible for the availability, accuracy, relevance, timeliness, or completeness of these external websites or any information thereon. Links to such websites or resources do not imply any endorsement by or affiliation with us. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

We may, from time to time, provide information from a third party in the form of a guest post or interview, in written, audio, video, or other medium. We do not control the information provided by such third-party guests, are not responsible for investigating the truth of any information provided, and cannot guarantee the veracity of any statements made by such guests.

### **INDEMNIFICATION**

You shall indemnify and hold us harmless from and against any and all losses, damages, settlements, liabilities, costs, charges, assessments, and expenses, as well as third-party claims and causes of action, including, without limitation, attorney's fees, arising out of your breach of any of these Terms, your use of the Website, its content, and any product or service purchased from the Website, or your failure to maintain the confidentiality and/or security of your password or access rights to this Website and its resources. You shall provide us with such assistance, without charge, as we may request in connection with any such defense, including, without limitation, providing us with such information, documents, records, and reasonable access to you, as we deem necessary. You shall not settle any third-party claim or waive any defense without our prior written consent.

### **EFFECT OF HEADINGS; SEVERABILITY**

The subject headings of the paragraphs and subparagraphs of these Terms are included for convenience only and shall not affect the construction or interpretation of any of its provisions. If any portion of these Terms is held to be unenforceable or contrary to law, such portion shall be construed in accordance with applicable law so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remainder of the provisions shall remain in full force and effect.

### **ENTIRE AGREEMENT; WAIVER**

These Terms, together with the Privacy Policy, constitute the entire agreement between us pertaining to the Website and supersedes all prior and contemporaneous agreements,

representations, and understandings between us. Any waiver by us of a breach of or right under these Terms will not constitute a waiver of any other or subsequent breach or right. No waiver shall be binding unless executed in writing.

### **GOVERNING LAW; JURISDICTION**

These Terms, including with the Privacy Policy and Disclaimers shall be construed in accordance with, and governed by, the laws of the State of California, and the courts of California shall have jurisdiction to hear and determine any dispute arising in relation to these Terms. You agree that any proceeding relating to use of this site must be filed exclusively in the appropriate courts located in San Luis Obispo County, California and you submit to the jurisdiction of those courts and waive any objection based on an inconvenient forum or other reasons.

### **ALTERNATIVE DISPUTE RESOLUTION**

The parties agree to attempt to resolve any dispute, claim, or controversy arising out of or relating to these Terms by mediation. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration, or other dispute resolution procedures.

### **ALL RIGHTS RESERVED**

All rights not expressly granted in these Terms are reserved by us. If you do not see a usage scenario here that applies to your intended usage contact us at [robyn@sweetwhimsyphotography.com](mailto:robyn@sweetwhimsyphotography.com).

### **CONTACT INFORMATION**

The owner of this website is Sweet Whimsy Photography. You may contact us by email at [robyn@sweetwhimsyphotography.com](mailto:robyn@sweetwhimsyphotography.com), or by mail at PO Box 1965, Atascadero, CA 93423-1965.