

LAY-BY PURCHASE AGREEMENT

Terms and Conditions

Gotcha! Pty Ltd ACN 113 417 860 t/a Gotcha! ABN 66 113 417 860 ('Gotcha!')

By signing this Agreement and/or purchasing goods or services on credit from Gotcha! you as the customer ('you'; 'Customer') hereby acknowledge that you are entering into a binding contract with Gotcha! Pty Ltd ACN 113 417 860 t/a Gotcha! ABN 66 113 417 860 ('Gotcha!') also t/a Gotcha! Magic and agree to be legally bound by the following terms and conditions:

1. Definitions

Agreement means this 'purchase agreement' and any changes agreed to by the parties in writing;

Agreed Lay-By Payment Plan means an interest/charge free payment plan offered to the Customer whereby the Goods are paid off over a number of installment as agreed between the Customer and Gotcha!, with the Goods provided to the Customer once the final payment has been made and they have been paid for in full;

Australian Consumer Law means schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Business Day means any day other than a Saturday, Sunday or public holiday in the jurisdiction where the Customer resides;

Conditions mean these purchase agreement terms and conditions;

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise;

Goods means any and all goods supplied by Gotcha! including, but not limited to, portraits, photography collections and all related or ancillary goods;

Loss means any expense, cost or damage of any kind

and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority;

Gotcha! means Gotcha! Pty Ltd ACN 113 417 860 t/a Gotcha! ABN 66 113 417 860, also t/a Gotcha! Magic, of Unit 21 / 6 Enterprise Street, Molendinar in the State of Queensland; and

Services means any services provided by Gotcha! including, but not limited to, the supply of photography collections and all related or ancillary services.

2. Interpretation

- (a) Singular words include the plural and vice versa. A mention of anything after include, includes or including, does not limit what else might be included.
- (b) These Conditions regulate key trading terms in connection with the supply of Goods or Services by Gotcha! to the Customer.

3. Customer Care Hotline Information

- (a) Gotcha! has established a special national customer care hotline telephone (07) 5564 6666. If you have a question or problem concerning your purchase, you are urged to contact us.

4. Customer obligations

- (a) These Conditions apply where Gotcha! accepts any order for Goods or Services or both from the Customer via an Agreed Lay-By Payment Plan.
- (b) The Customer has no entitlement to lay-by terms unless in its sole discretion Gotcha! extends lay-by terms to the Customer.
- (c) If in any particular instance, Gotcha! gives the Customer credit via an Agreed Lay-By Payment Plan, Gotcha! reserves the right at any time and for any reason in Gotcha!'s sole discretion to refuse to supply any further Goods or Services to the Customer and to refuse to supply any Goods or Services or both to the Customer on credit or lay-by terms. If Gotcha! does decline to give the Customer further credit or lay-by terms then that decision does not affect the terms which apply

to any amounts the Customer then owes to Gotcha!.

(d) The Customer agrees that it must:

- (i) pay, without any deduction or setoff, the price charged by Gotcha! for Goods or Services supplied to the Customer on delivery or performance, within the term of an Agreed Lay-By Payment Plan; and
- (ii) until the Goods have not yet been paid for in full, advise Gotcha! in writing of the occurrence of any act of insolvency, any change in its name and not later than within two (2) Business Days of such event, or change occurring. The Customer acknowledges that, despite any such event, or change, the Customer remains liable to pay the price for all Goods or Services supplied.

5. Availability and Alterations

- (a) Acceptance of orders and completion of contracts are subject to the availability of the Goods.
- (b) Gotcha! reserves the right to vary or alter any of the designs, specification and packaging of all of its products described in its sales literature if circumstances so require. In the event that any fundamental variation or alteration does take place, Gotcha! shall inform the Customer at the earliest opportunity.

6. Risk

- (a) Risk in relation to any Goods passes to the Customer on delivery of the Goods.
- (b) If Gotcha! has expressly agreed to ship the Goods, risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by Gotcha! or its agent.

7. Delivery

- (a) Although Gotcha! will use all reasonable efforts

to meet its forecasts for delivery of the Goods, such forecasts are estimates only.

8. Exclusion of implied terms

- (a) The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into this Agreement or in connection with the supply of any Goods or Services by Gotcha! under law or statute or custom or international convention are expressly excluded.

9. Colour Matching and Sizes

- (a) Owing to photochromatic anomalies caused by a combination of certain dyes and materials, especially in man-made fibres, it is sometimes impossible to record on camera the exact colour of materials as perceived by the human eye.
- (b) When processing photos, Gotcha! will endeavour to achieve a pleasing overall colour balance based on natural flesh tones. It is understood that some colours may not remain consistent throughout a set of photographs owing to variations in lighting conditions and where photo altering has been applied to enhance or create a mood to the image. It is also understood that all photographic printing is undertaken within the technical limitations of the process and that colour may not be identical over the whole range within a subject.

- (c) The colour balance of prints made at different times or in varying sizes may also be variable. Due to the limitations of computer monitors it is understood that photos may appear differently according to the specification of each monitor and that prints will not match photos rendered on any particular computer monitor.

10. Limitation of liability

- (a) To the maximum extent permitted by law, Gotcha!'s total liability arising out of or in connection with its performance of its obligations pursuant to this Agreement, or

arising out of or in connection with the supply of specific Goods (including pursuant to or for breach of this Agreement or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (i) Gotcha! shall have no liability to the Customer for any Consequential Loss; and
- (ii) Gotcha!'s total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to Gotcha! for the specific Goods or Services that gave rise to the Loss in question. The limitations and exclusions in this sub-clause do not apply to the extent that any Loss is directly attributable to:
 - (A) the personal injury or death caused by Gotcha!'s default, breach of this Agreement or negligence; or
 - (B) fraud by Gotcha!.

- (b) Each party must take reasonable steps to mitigate any Loss it suffers or incurs.
- (c) Any directions issued to Customers or their guests during a photographic shoot are deemed to be at said person's own risk. Gotcha! cannot be held responsible for any personal accidents or incidents incurred.

11. Intellectual Property

- (a) Gotcha! owns all rights to images provided under this Agreement, including copyright, which may be used for promotional purposes. Customer/s can use images for personal use, anything outside requires permission to be given to the Customer by Gotcha! in writing.
- (b) The Customer indemnifies Gotcha! in respect of any claims or damages or any costs arising in any manner from any reproduction of the Goods without proper reproduction rights of any image supplied to the Customer by Gotcha!.
- (c) The Customer may purchase the copyright to the images provided under this Agreement, subject

to paying a further fee, to be negotiated at the time of request, to Gotcha!.

12. GST

- (a) If Gotcha! has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to Gotcha! an amount equivalent to the GST liability of Gotcha! at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

13. Miscellaneous

- (a) The person signing this Agreement on behalf of the Customer does so for and on behalf of the Customer and hereby covenants with Gotcha! that he or she has the authority of the Customer to make this Agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this Agreement and hereby indemnifies Gotcha! against all losses, costs and claims incurred by Gotcha! arising out of the person so signing this Agreement not in fact having such power and/or authority.
- (b) If any of the terms and conditions of this Agreement are found to be void, voidable or unenforceable, then that part of this Agreement shall be severed from, and will not affect or derogate from, the validity and enforceability of the remaining provisions of, this Agreement.
- (c) No amendment or variation of this Agreement is valid or binding on a party unless made in writing and executed by the parties.
- (d) This Agreement is governed by the laws of the State or Territory in which the Goods are being sold or Services provided by Gotcha!.
- (e) This Agreement contains the entire agreement between the parties and supersedes any and all prior agreement or negotiations between the parties. No other terms and conditions shall be binding upon Gotcha! unless agreed to in writing by Gotcha! after the date of this Agreement.

14. Payment

- (a) Payment in full for the Goods shall be made via an Agreed Lay-By Payment Plan between the Customer and Gotcha!.
- (b) The Goods will be provided to the Customer as soon as reasonably possible after the final payment of the Agreed Lay-By Payment Plan has been made and the Goods have been paid for in full.
- (c) Until such time as the final payment of the Agreed Lay-By Payment Plan has been received in full by Gotcha!, the Goods will be held by Gotcha! in storage pursuant to clause 16 of this Agreement.
- (d) A record of payments transaction history will always be available for the Customer, recording all amounts paid to-date and the date and value of all future pending payments as per the Agreed Lay-By Payment Plan.

15. Late Fees

- (a) Where the Customer is late in making an installment pursuant to the Agreed Lay-By Payment Plan, Gotcha! will charge the Customer a \$10.00 late fee per missed payment.
- (b) Gotcha! shall also be entitled to pass-on to the Customer all charge back fees received by any given bank for any given customer charge back from resulting from any late payments.

16. Storage of Goods

- (a) Goods purchased on lay-by pursuant to this Agreement will be set aside and stored separately to other products. Products will be clearly identified as 'Lay-By contract' products by a number or some other method of identification.

17. Suspension of Payment Plan

- (b) In the event that the Agreed Lay-By Payment Plan is in a state of default (due to missed payments) and remains unpaid for a period of six

(6) or more months from the from the date of the last successful/cleared payment, Gotcha! will make all reasonable attempts to contact the Customer, and if these attempts are unsuccessful, the physical Goods will be securely disposed of and any digital copies may not be held. In this event the Customer agrees that all payments made by him or her will be held in credit for use by the Customer should they contact Gotcha! at a later date, and wish to use such credit for alternative Services.

18. Termination by Customer

- (a) The Customer may terminate this Agreement at any time prior to delivery of the Goods and on delivery of Goods if the Goods are damaged by so advising Gotcha! in writing.
- (b) If the Customer cancels this Agreement, Gotcha! will, if so requested by the Customer, give the Customer a "termination statement" which:
 - (i) sets out the purchase price of the Goods;
 - (ii) advises the Customer of the termination fee payable to Gotcha! under these Conditions;
 - (iii) sets out the total amount paid under this Agreement; and
 - (iv) details any amount owing to either the Customer or Gotcha! on the termination of the Agreement.
- (c) Once the Goods are delivered to the Customer, or otherwise received in credit under the Gotcha! pay program or other third-party provider, Gotcha! does not provide refunds of any amount paid under this Agreement due to a change of mind or incorrect choice by the Customer.

19. Termination by Gotcha!

- (a) Gotcha! may terminate this Agreement by notice in writing to the Customer if:
 - (i) the Customer breaches a term of this Agreement;
 - (ii) Gotcha! ceases trading; or
 - (iii) the Goods are no longer available.

20. Termination due to Breach by Customer

- (a) If the Customer breaches a term of this Agreement and Gotcha! intends to terminate this Agreement, before doing so Gotcha! must:
 - (i) give the Customer notice of Gotcha!'s intention to terminate this Agreement ('**Breach Notice**'); and
 - (ii) allow the Customer at least fourteen (14) days within which to rectify the breach.
- (b) The Breach Notice must:
 - (i) be in writing;
 - (ii) be sent to the Customer's last known address;
 - (iii) specify the breach of this Agreement;
 - (iv) state the time within which the Customer must rectify the breach; and
 - (v) state the matters listed below:
 - (A) The purchase price of the Goods;
 - (B) All termination charges payable under the agreement;
 - (C) The total amount paid under this Agreement; and
 - (D) Any amount owing to either the Customer or Gotcha! under the terms of this Agreement upon termination.
- (c) This Agreement is terminated pursuant to this clause at the end of the period specified in the Breach Notice unless the Customer rectifies the breach beforehand.

21. Termination where trading ceases

- (a) If Gotcha! proposes to cease trading before this Agreement is completed, Gotcha! must give notice of the proposal to the Customer and must either:
 - (i) allow the Customer seven (7) days within which to complete this Agreement; or
 - (ii) terminate this Agreement.

22. Effect of Termination

- (a) Subject to the above, when this Agreement is terminated by either party, Gotcha! must refund all money paid within fourteen (14) days less a cancellation/termination fee of \$150.00 plus any further additional costs to cover Gotcha!'s reasonable costs of administering this Agreement.
- (b) Gotcha! shall also be entitled to pass-on to the Customer all charge back fees received by any given bank for any given customer charge back from resulting from this Agreement.

23. Third Party Tools

- (a) Gotcha! may provide the Customer with access to third-party tools, which Gotcha! neither monitors nor has any control over input. The Customer acknowledges that and agrees that Gotcha! provides access to such tools "as is" and "as available" without any warranties, representations or conditions of any kind whatsoever and without any endorsement. Gotcha! shall have no liability whatsoever arising from or relating to the Customer's use of optional third-party tools.
- (b) Any use by the Customer of optional third party tools is entirely at the Customer's own risk and discretion and the Customer should ensure that the Customer is familiar with and approves of the terms, including any additional fees and charges.