



# **Commercial Photography Standard Terms & Conditions**

## **1.0 DEFINITIONS**

For the purpose of this agreement "the Agency" and "the Advertiser" shall where the context so admits include their respective assignees, sub-licensees and successors in title. In cases where the client is a direct client (i.e. with no agency or intermediary), all references in this agreement to both "the Agency" and "the Advertiser" shall be interpreted as references to the client. "Photographs" means all photographic material furnished by Fitz Marine Photography, whether transparencies, negatives, prints or any other type of physical or electronic material.

## **2.0 COPYRIGHT**

The entire copyright in the Photographs is retained by Fitz Marine Photography at all times throughout the world, unless assigned by prior agreement in writing.

## **3.1 OWNERSHIP OF MATERIALS**

Title to all photographs remains the property of Fitz Marine Photography. When the Licence to Use the material has expired all usages must be stopped and digital files deleted.

## **4.0 USE**

The Licence to Use comes into effect from the date of payment of the relevant invoice(s). No use may be made of the Photographs before payment in full of the relevant invoice(s) without Fitz Marine Photography's express permission.

Any permission which may be given for prior use will automatically be revoked if full payment is not made by the due date or if the Agency is put into receivership or liquidation.

The Licence only applies to the advertiser and product as stated on the front of the form and its benefit shall not be assigned to any third party without Fitz Marine Photography's permission. Accordingly, even where any form of 'all media' Licence is granted, Fitz Marine

Photography's permission must be obtained before any use of the Photographs for other purposes e.g. use in relation to another product or sublicensing through a photo library.

Permission to use the Photographs for purposes outside the terms of the Licence will normally be granted upon payment of a further fee, which must be mutually agreed in writing (and paid in full) before such further use. Unless otherwise agreed in writing, all further Licences in respect of the Photographs will be subject to these terms and conditions.

## **5.0 EXCLUSIVITY**

The Agency and Advertiser will be authorised to publish the Photographs to the exclusion of all other persons including Fitz Marine Photography. However, Fitz Marine Photography retains the right in all cases to use the Photographs in any manner at any time and in any part of the world for the purposes of advertising or otherwise promoting his/her work.

After the exclusivity period indicated in 'The Licence to Use' Fitz Marine Photography shall be entitled to use the Photographs for any purposes.

## **6.0 CLIENT CONFIDENTIALITY**

Fitz Marine Photography is committed to protecting your privacy when you commission our services you provide us with personal information, and we will endeavour to conform with the Data Protection Act 1998 accordingly.

The only information we gather about you are the details you give us when we discuss the brief for your commission, enter into an agreement to commission photographic services or we complete a licence to use agreement on your behalf. We confirm that we will only use this information as follows;

- Processing your commission/orders;
- For statistical or survey purposes to improve services provided to our customers;
- To administer a commission;
- If you consent, to notify you of further services or special offers that may be of interest to you.

You agree that you do not object to us contacting you for any of the above purposes whether by telephone, e-mail or in writing and you confirm that you do not and will not consider any of the above as being a breach of any of your rights under the Privacy and Electronic Communications (EC Directive) Regulations 2003.

We do not share information about our customers with third parties, except where necessary to fulfil an order that you place with us or to comply with legal requirements.

We will keep confidential and will not disclose to any third parties or make use of material or information communicated to Fitz Marine Photography in confidence for the purposes of the photography, save as may be reasonably necessary to enable Fitz Marine Photography to carry out his obligations in relation to the commission.

## **7.0 INDEMNITY**

Fitz Marine Photography agrees to indemnify the Agency and the Advertiser against all expenses, damages, claims and legal costs arising out of any failure by Fitz Marine Photography to obtain any clearances for which he was responsible in respect of third party copyright works, trade marks, designs or other intellectual property.

Fitz Marine Photography shall only be responsible for obtaining such clearances if this has been expressly agreed before the shoot. In all other cases the Agency shall be responsible for obtaining such clearances and will indemnify Fitz Marine Photography against all expenses, damages, claims and legal costs arising out of any failure to obtain such clearances.

The Client should insure all properties entrusted to Fitz Marine Photography Photography against all risk.

## **8.0 DEPOSIT & PAYMENT**

Any commission booking entered into which exceeds the monetary value of FMP's standard full day charge out rate will require a partly-refundable deposit payment of 50% of the commissions value at the time of booking. 25% of the deposit will be returned to client for all cancellations made up to and including 10 days prior to the confirmed booking. For all cancellations made less than 10 days prior to the confirmed booking the full deposit sum will be retained.

In certain circumstances FMP may be willing to transfer the deposit fee to an alternative booking or commission of equal or greater value. It is fully at FMP discretion as to whether a deposit transfer will be authorised.

Payment by the Agency will be expected for the commissioned work within 30 days of the issue of the relevant invoice. If the invoice is not paid, in full, within 30 days Fitz Marine Photography reserves the right to charge interest at the rate prescribed by the Late Payment of Commercial Debt (Interest) Act 1998 at 2% over bank rates from the date payment was due until the date payment is made. Failure to pay revokes any permission or agreed licence, see 4.0 above.

## **9.0 EXPENSES**

Where extra expenses or time are incurred by Fitz Marine Photography as a result of alterations to the original brief by the Agency or the Advertiser, or otherwise at their request, the Agency shall give approval to and be liable to pay such extra expenses or fees at Fitz Marine Photography's normal rate to Fitz Marine Photography in addition to the expenses having been agreed or estimated.

## **10.0 REJECTION**

Unless a rejection fee has been agreed in advance, there is no right to reject on the basis of style or composition.

## **11.0 CANCELLATION & POSTPONEMENT**

A booking is considered firm as from the date of confirmation and accordingly Fitz Marine Photography will, at his discretion; charge a fee of 20% of the total fee for cancellations made between 10-21 days prior to the booking, or 50% for cancellations made less than 10 days prior to the booking.

## **12.0 RIGHT TO A CREDIT**

Where practicable it is requested that a credit to Fitz Marine Photography is printed on or visible in reasonable proximity to all published reproductions of the Photograph(s).

## **13.0 ELECTRONIC STORAGE**

Save for the purposes of reproduction for the licensed use(s), the Photographs may not be stored in any form of electronic medium without the written permission of Fitz Marine Photography.

Manipulation of the image or use of only a portion of the image may only take place with the permission of Fitz Marine Photography.

## **14.0 DIGITAL ARCHIVAL**

Fitz Marine Photography accepts no responsibility whatsoever for long term archival of digital images unless otherwise agreed in writing. However images will be retained for as long as possible while they remain retrievable.

## **15. APPLICABLE LAW**

This agreement shall be governed by the laws of England & Wales

## **16. VARIATION**

These Terms and Conditions shall not be varied except by agreement in writing.

## **17. CONTACT DETAILS**

The trading details for Fitz Marine Photography are:

Brendan Fitzgerald  
Fitz Marine Photography  
The Old Bakery  
21 Smithwick Hill  
Falmouth  
Cornwall  
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