

## Terms and Conditions

These Terms and Conditions govern the purchase and reproduction of images from the Fitzwilliam Museum of Trumpington Street, Cambridge CB2 1RB (**Fitzwilliam**) and the **Licensee** named above upon the Fitzwilliam's standard conditions below (**Terms & Conditions**).

Please note that a contract is formed only on confirmation by the Fitzwilliam of receipt of payment from the Licensee to the Fitzwilliam. These Terms and Conditions supersede all other terms and conditions and the Licensee waives any right which it otherwise might have to rely on such terms and conditions.

### 1. Grant of Licence

- 1.1 The Fitzwilliam grants to the Licensee on these Terms and Conditions a non-exclusive, non-transferable, non-sublicensable, non-assignable right to use the image(s) as detailed in the quotation provided by the Fitzwilliam to the Licensee (**Image(s)**). Such use shall be in the territory for the duration and for the licensed uses as set out in the quotation only. Any additional uses required by the Licensee shall be subject to the prior written approval of the Fitzwilliam and such terms and additional fees as it may specify.
- 1.2 The Licensee acknowledges and agrees that if any intellectual property rights in the Image(s) arise from the Licensee's use of them (including but not limited to any publication rights), all such rights are hereby assigned to the Fitzwilliam absolutely.

### 2. Rights clearances of underlying work

As a condition precedent to the licence detailed in Clause 1.1 for the reproduction of Image(s) that are subject to any third party intellectual property rights the Licensee undertakes to conduct its own due diligence and approach the third party rights holder(s) for the relevant permission(s) to use the Image(s) for the Licensed Use(s).

### 3. Reproduction of the Image(s)

- 3.1 The Licensee agrees that in using the Image(s) it must:
  - 3.1.1 comply with all codes of practice and statutory requirements relevant to the reproduction and not in any way damage (or have the potential to damage) the reputation of Fitzwilliam or commercial value of the Image(s);
  - 3.1.2 not reproduce the Image(s) in any way that infringes the rights (including intellectual property rights, data protection rights or rights of privacy) of any third party, is obscene, libellous or unlawful;
  - 3.1.3 use the Image(s) in their entirety unless use of part of the image is specifically authorised within the Licensed Uses and the word "detail" must be included in the caption (and subject to any other terms specified by the Fitzwilliam);
  - 3.1.4 use the Image(s) in accordance with the licensed use(s) and all specifications set out in the quotation provided by the Fitzwilliam to the Licensee;

- 3.1.5 not alter, manipulate or overprint the Image(s) and ensure that any reproduction of the Image must be a true representation of the original work (for the avoidance of doubt manipulation for minor colour correction is permitted);
  - 3.1.6 not mask out, cut down, superimpose with any other text or material or in any other way deface the Image(s) without the prior written permission from the Fitzwilliam; and
  - 3.1.7 store the Image(s) securely and prevent any unauthorised use by any third party.
- 3.2 In no circumstances may the licence under Clause 1.1 be treated as a licence to incorporate the Image(s) in a commercial picture library or archive.
- 3.3 Prior to the publication of any reproduction of the Image(s), the Licensee may be required by the Fitzwilliam to submit a high resolution colour proof to the Fitzwilliam for approval and no use may be made unless and until the Fitzwilliam's approval has been given (such approval not to be unreasonably withheld or delayed).

#### **4. Payment**

In consideration of the rights granted at Clause 1.1 the Licensee will pay the Fitzwilliam the fee exclusive of any VAT or equivalent sales tax as applicable as set out in the quotation provided by the Fitzwilliam to the Licensee and in accordance with any invoicing arrangements detailed therein.

#### **5. Liability**

- 5.1 The Licensee agrees to indemnify the Fitzwilliam in respect of all and any claims, losses, damages or costs arising in any manner howsoever from the reproduction of the Image(s) including but not limited to the infringement of any third party intellectual property rights and/or the Licensee's failure to obtain the permission(s) required to reproduce the Image(s).
- 5.2 The Fitzwilliam shall not be liable for any consequential, indirect, incidental, economic or financial losses or loss of profits in connection with the supply or use of the Image(s). The liability of the Fitzwilliam howsoever arising from or in connection with the licensing of the Image(s) to the Licensee on these Terms and Conditions is limited in aggregate to the fee paid or payable under Clause 4 above.
- 5.3 Nothing in this Agreement is intended and nor shall it be construed as an attempt by the Fitzwilliam to exclude or limit its liability for any liability which cannot be excluded or limited under applicable law.
- 5.4 Save as expressly set out in this Agreement all warranties, representations or guarantees whether express or implied by statute, common law or otherwise relating to delivery, description, performance, quality or fitness for purpose of Image(s) are hereby excluded. The Fitzwilliam does not give any express or implied warranties that the Image(s) are free from third party rights; nor is any licence granted under this Agreement in respect of such third party rights.

## **6. Termination**

- 6.1 Either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party commits a breach of the terms of this Agreement which (if capable of remedy) it fails to remedy within 30 days of receipt of a notice requiring such breach to be remedied.
- 6.2 Upon termination of this Agreement the Licensee shall cease all use of the Image(s); and all copies of the Image(s) and any materials incorporating the Image(s) shall be destroyed or delivered to the Fitzwilliam within 30 days according to the Fitzwilliam's instructions and evidence to this effect shall be provided in writing to the Fitzwilliam by the Licensee.

## **7. General**

- 7.1 Variation. No variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each party.
- 7.2 Third party rights. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 7.3 Further assurance. The Licensee shall at the request of the Fitzwilliam do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 7.4 Entire agreement. This Agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement.
- 7.5 Law and jurisdiction. This Agreement is governed by English law and the parties submit to the exclusive jurisdiction of the English courts.