

# FINE HOMES PHOTOGRAPHY

## TERMS & CONDITIONS AGREEMENT

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Each image produced by Fine Homes Photography (“FHP”) is a valuable asset. By utilizing the services of FHP, you are entering into a binding contract with FHP, you recognize that FHP is the sole owner of the images it produces, and you accept the terms and conditions of use and agree to be bound by the terms and conditions as they are set-out below.

Your privilege to use and access the services of FHP is contingent on your compliance with the terms and conditions contained in this Agreement. FHP may revoke your privilege to use its services and may take any other appropriate measures required to enforce this Agreement, if violations are brought to FHP’s attention.

### **1. DEFINITIONS:**

1.1 This Terms & Conditions Agreement (this “**Agreement**”) is between you (the “**Client**”) and FHP. For the purposes of this Agreement, the definition of Client includes the Client’s principals, employees, affiliates and representatives.

1.2 The term “**Images**” refers to the photographic material, whether still or moving, created by FHP pursuant to this Agreement. The term Images includes, but is not limited to, transparencies, negatives, prints or digital files, captured, recorded, stored or delivered in any type of analogue, photographic, optical, electronic, digital or other media.

### **2. OWNERSHIP:**

2.1 The Client acknowledges and agrees that by entering into this Agreement, the Client is not buying the Images, but is licensing the right to the use the Images for a specific purpose only, and accordingly, the Images remain the property of FHP, in perpetuity.

2.2 The Client acknowledges and agrees that FHP is the creator of the Images, that FHP is the sole owner of the Images and the owner of all copyrights associated with such Images, and that FHP retains the right to re-license or re-sell the rights to the Images, without prior consultation or notification to the Client.

### **3. USE:**

#### **(A) USE -**

##### **GENERAL:**

3.1 Subject to the restrictions outlined below, the Client must use the Images in their as-provided format.

3.2 Unless otherwise agreed to in advance in writing by FHP, any rights granted to the Client to utilize the Images, are non-exclusive, non-sub-licensable and non-transferrable.

#### **(B) USE –**

##### **THE CLIENT MUST:**

3.3 Always include an attribution to FHP for the creation and ownership of the Images when the Images will be featured in publications, press releases, advertising or websites, for any purpose outside of the promotion and sale of a subject property. Attribution to FHP is not required for Images used for the purpose of advertising a subject property in the real estate section(s) of a newspaper, in a real estate publication, listing the subject property with the multiple listing service (MLS) or promotion the subject property on social media. The Client should always err on the side of caution when attributing the creation and ownership of an image to FHP and in the event the Client is uncertain whether an Image should or should not be attributed to FHP, contact FHP directly for guidance and direction regarding attribution.

#### **(C) USE –**

##### **THE CLIENT MAY NOT:**

3.4 Alter, modify, adapt, crop, retouch, animate or embellish the Images in any way. However, normal reproduction adjustments for colour, contrast, brightness, sharpness or cropping, are permitted. The Client acknowledges that any such adjustment of any Images, does not constitute a work of joint ownership between the Client and FHP.

3.5 Without first receiving the prior written consent of FHP, make, manufacture, promote or display any items or materials that make use of the Images in any way.

3.6 Without first receiving the prior written consent of FHP, directly link to Images hosted on FHP's websites: ([www.finehomesphoto.com](http://www.finehomesphoto.com)) or use any Images on the Client's website, without appropriate attribution of FHP's ownership or copyright of the Images.

3.7 Remove or crop out the copyright notice from any Images.

3.8 Insert the Client’s own copyright or ownership notice on any Images or otherwise imply that the Images are the Client’s own work or property.

3.9 Claim any proprietary right, of any sort, to the Images.

3.10 Use or authorize the use of, sale, share or give away, of any Images to any third parties, without first obtaining the prior written authorization from FHP to do so.

3.11 Without first receiving the prior written consent of FHP, the Client will not use, reproduce, display, transmit, distribute or otherwise exploit the Images for the purposes of advertising or promotion of the Client’s products or services. FHP alone retains the right to use the Images for its own self-promotion.

**4. CONSENTS/PERMISSIONS/AUTHORIZATIONS:**

4.1 FHP is not responsible for obtaining the required consents, permissions or authorizations from the legally recognized property owner(s) or their authorized representative(s) in connection with the photographing of a subject property and/or the creation of the Images. It is the Client’s sole responsibility to obtain all such necessary consents, permissions and/or authorizations. By entering into this Agreement, the Client acknowledges, represents and warrants that they have obtained all necessary consents and indemnifies FHP for any failure or omission on the part of the Client to do so.

**5. FEES & CANCELLATIONS/RESCHEDULING:**

5.1 The Client agrees to pay FHP all fees and expenses incurred in connection with the assignment undertaken by FHP for the Client, whether or not the Client uses any of the Images created.

5.2 Where the Client cancels or reschedules an appointment with FHP, the following fees will apply:

- (a) Cancellations/requests for rescheduling made less than 24 hours from the scheduled appointment time, will be subject to 100% of the fee as a penalty;
- (b) Cancellations/requests for rescheduling made 25-48 hours from the scheduled appointment time, will be subject to 50% of the fee as a penalty; and
- (c) Cancellations/requests for rescheduling made more than 48 hours from the scheduled appointment time, will not incur any penalty fee.

5.3 If the same assignment/appointment is rescheduled for a later date, the full fee will be charged to the Client, in addition to the penalty fee charged and payable upon cancellation/rescheduling, as outlined in Paragraph 5.2 above.

## **6. GENERAL LIABILITY & RELEASE:**

6.1 While FHP will take reasonable care in the production of the Images and its duties of performance under this Agreement, it will not be held liable for any losses, damages or costs suffered by the Client or by any third party, as a result of the Client's use of any Images.

6.2 The Client will indemnify, defend and hold harmless, FHP, its principals, employees, contractors and/or representatives, against any and all claims, liabilities, damages, costs and expenses, including reasonable legal fees and expenses, that may arise as a result of the Client's use of the Images.

6.3 This Agreement shall be governed by and construed in accordance with the laws of Canada and the Province of Ontario and each party to this Agreement agrees to submit to the exclusive jurisdiction of the court of Ontario to resolve any disputes.

6.4 In the event that any provision of this Agreement is held by a competent authority to be invalid or unenforceable (in whole or in part), the validity of the remaining terms and conditions and the remainder of any such provision shall remain unaffected.

6.5 Except for the limited rights expressly permitted under this Agreement, no other rights of any kind are granted hereunder, by implication or otherwise.