

# **EXANZA TERMS AND CONDITIONS OF COMMISSIONING AND REPRODUCTION OF PICTURES**

1. In this Agreement the terms

- (a) **picture** includes a photograph, transparency, negative, digital scan, design, artwork, painting, montage drawing, engraving or any other item which may be offered for the purposes of reproduction.
- (b) **reproduction** includes any form of publication or copying of the whole or part of any picture and whether or not altered by printing, photography, slide projection (whether or not to an audience) xerography, artist's reference, artist's illustration, layout or presentation, electronic or mechanical reproduction or storage by any other means
- (c) the **Client** is the person or organisation to whom the invoice is addressed (whether or not the Client is acting for a third party).

2.

- (a) The entire copyright in the pictures is retained by Nik Barrie at all times throughout the world.**
- (b) Exanza Ltd supplies the technical and artistic ability to illustrate an idea photographically, and sells the right to reproduce those pictures in a given context. No property or copyright in any pictures shall pass to the Client whether on its submission or on Exanza's grant of reproduction rights in respect thereof.**
- (c) Nik Barrie asserts both his moral right to be identified as the author of his work and the right to a credit is asserted in accordance with sections 77 and 78 of Copyright, Designs and Patents Act 1988.**
- (d) Unless otherwise agreed in writing if any picture reproduced by the Client omits the copyright notice or credit line specified by Exanza, any fee payable by the Client shall be subject to an increase specified by Exanza, and in any event an increase of not less than 25%

3.

- (a) Reproduction rights (if and when granted) are strictly limited to the use and period of time specified on Exanza's invoice or in the accompanying License To Use. An agreement must be reached with Exanza before the pictures are used for a different purpose or after the Licence To Use has expired.
- (b) Reproduction rights are not issued exclusively to the Client except when specified on the invoice.

(c) Reproduction rights granted are personal to the Client and may not be assigned, nor may any picture submitted to the Client be loaned or transferred to third parties save for the purpose of the exercise by the Client of such reproduction rights

(d) Any reproduction rights granted are by way of licence and no partial or other assignment of copyright shall be implied.

(e) Exanza reserves the right to refuse to supply or grant a reproduction licence to a third party when requested to do so by the Client.

#### 4.

The following terms are used when describing the reproduction rights granted by Exanza to the Client:

(a) Internal Use only: The right to use the pictures only within a company for non-commercial purposes; publication in a free in-house magazine not normally available to the public; exhibition within the Client's premises; editorial use in the Client's intranet site.

(b) PR and Press distribution: The right to use the pictures as described in 4(a); plus a licence for third parties to reproduce such pictures in print or electronic media in an editorial context where no fee has been paid to guarantee publication.

(c) Specified Use Only: The right to use the pictures once only for the purpose as described on the invoice.

(d) Editorial: One reproduction only of pictures supplied within one print edition of the specified title in an editorial context only.

#### 5.

(a) Risk in and responsibility for any original transparencies or prints passes to the Client from the time they are received until their safe return. The Client shall immediately inform Exanza in writing of any loss or misuse of, or damage to the pictures while in the Client's possession or that of any third party. If a picture is not returned within four weeks of the date for return then Exanza may in its sole discretion presume it to be lost.

(b) The Client shall be liable to pay compensation to Exanza in respect of each picture lost or damaged. Payment of compensation does not give rise to any rights in any picture. Compensation levels for the pictures are available from Exanza upon request. These levels are a genuine pre-estimate of the loss which would be suffered if such a picture were to be lost or damaged. the Client is urged to request these figures and to take out insurance cover to cover the total value of the pictures delivered.

#### 6.

(a) Once the Client has made a booking for a specific time and date, Exanza will not accept any other work from other clients for those times and dates.

(b) As a result, once a booking is made, if it is subsequently cancelled, a cancellation fee will be charged to the client according to the following schedule. When a client cancels a booking within two weeks of any confirmed date, a fee of 50% of the booked time rate will be charged. When a client cancels photography within one week of any confirmed date, a fee of 100% of the booked time rate will be charged. In addition to this cancellation fee, the client will be charged for any expenses already incurred by Exanza.

7.

(a) Until Exanza has invoiced the reproduction fee neither party is committed to grant or acquire any reproduction rights in any picture. After a fee has been agreed and an invoice issued there is a firm and binding contract whereby Exanza is committed to grant reproduction rights and the Client to acquire them. If after such invoicing but before payment the Client requests cancellation of the reproduction rights Exanza may in its discretion cancel subject to the Client paying a cancellation fee.

(b) The Client's right to reproduce a picture arises only when Exanza invoice relating to the grant of such right is fully paid (including interest charges levied on late payment of the invoice or invoices). Any reproduction before payment of the invoice constitutes an infringement of rights and a breach of this Agreement entitling Exanza to rescind the Agreement and rendering the Client liable for the payment of damages.

(d) If payment is not made in accordance with (a) above then Exanza may rescind this Agreement and recover damages, or, at its option, may exercise its statutory right to interest under the Late Payment Of Commercial Debts (Interest) Act 1998.

(e) If any invoice issued to the Client is not paid by the Due Date, then all unpaid invoices issued to the Client become due of immediate effect, even if it is less than 30 days from the issue date, and that Exanza may consider these invoices as overdue when pursuing legal action for the recovery of said debts.

(f) A fee of £10 (no VAT payable) will be made for each account reminder, duplicate invoice, or any other paperwork, correspondence or phone calls involved with the pursual of a debt. This fee is non-refundable, and represents the additional time spent pursuing overdue invoices.

(h) Exanza reserves the right to suspend ongoing services, such as (but not limited to) downloadable web pages or other distribution of pictures, once any invoice issued to a Client becomes overdue, and also reserves the right to inform the reason of this to third parties to whom this suspension of service affects.

8.

On the Client's death or bankruptcy or (if the Client is a company) in the event of a Resolution, Petition or Order for winding up being made against it, or if a Receiver is appointed, Exanza may at any time thereafter inspect any records, accounts and books relating to the reproduction of its pictures to ensure that the pictures are being used only in accordance with the reproduction rights granted to the Client.

9.

(a) Exanza will edit every take and deliver what it considers to be the best of every situation covered. As a result, contact sheets (or their digital equivalent) will only be supplied to the client in exceptional circumstances.

(b) No addition to, deletion from or alteration to or adaptation of a picture may be made without the written permission of Exanza.

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

10.

In the case of printed publications, a copy of the relevant pages containing any picture supplied are to be furnished to Exanza free of charge within two weeks. In other media, evidence of use must be made available if requested.

11.

(a) While Exanza takes all reasonable care in the performance of this agreement generally, it shall not be liable for any loss or damage suffered by the Client or by any third party arising from use or reproduction of any picture or its caption.

(b) The Client agrees to indemnify Exanza in respect of any claims or damages or any costs arising in any manner from the reproduction without proper reproduction rights of any picture supplied to the Client by Exanza.

(c) It is the Client who must satisfy himself that all necessary rights, model releases or consents which may be required for reproduction, are obtained and it is acknowledged that Exanza gives no warranty or undertaking that any such rights, model releases or consents have or will be obtained whether in relation to the use of names, people, trade marks, registered or copyright designs or works of art depicted in any picture. In the event that the picture issued or reproduced by or with the authority of the Client then the Client shall indemnify Exanza against any loss or damage, proceedings or costs where such rights, releases or consents have not been obtained.

12.

(a) This Agreement shall be subject to and constructed according to English Law and the parties agree to accept the exclusive jurisdiction of the Courts of England.

(b) No variation of terms and conditions set out herein shall be effective unless agreed in writing by both parties.

## PAYMENT

Payment should normally be made by crossed cheque made payable to "Exanza Ltd". BACS details can be supplied upon request (and are supplied as standard on invoices). Proof of postage of remittances is not considered proof of receipt, and clients are advised to send payment by any method affording proof of delivery.

Our terms are strictly 14 days (two weeks) unless agreed in advance and in writing.