

# Marko Zirdum Royalty Free End User Licence Agreement (EULA)

This is a legal agreement between you or your company, firm or other organisation ("you") and Photographer Marko Zirdum. Photographer Marko Zirdum has been appointed agent by its Contributors to grant this Licence on their behalf.

Please read this agreement carefully in its entirety before you download or use any image. By confirming the purchase of the Image(s) or downloading the Image(s) you have selected from this website you agree to be bound by the terms of this EULA (the "Agreement") and the Image usage restrictions contained herein. If you do not wish to accept the terms of this Agreement, please delete the unused Image(s) and notify Photographer Marko Zirdum by email to the following address [marko@zirdum.net](mailto:marko@zirdum.net) within ten days from the invoice date for a full refund.

## 1. Definitions

### **"Terms"**

Means the terms and conditions set out in this Agreement and includes the terms contained in the Invoice. The terms contained in the Invoice replace those in this Agreement to the extent of any inconsistency.

### **"Photographer Marko Zirdum"**

Means Marko Zirdum Freelance photographer and Image copyright holder.

### **"Invoice"**

Means the computer-generated or pre-printed invoice provided by Photographer Marko Zirdum that may include, without limitation, details of the Images selected, any limitations on the Licence in addition to those specified herein, the key terms of the Licence and the corresponding price for the Licence. The terms contained in the Invoice shall be incorporated into this Agreement and all references to the Agreement shall include those terms.

### **"Image(s)"**

Means the Image(s) you have selected which are identified on the Invoice or, in the case of a virtual CD, the CD which is identified on the Invoice.

### **"Licence"**

Means the non-exclusive (unless otherwise stated in the Invoice) non-sublicensable right Photographer Marko Zirdum grants to you to use the Image(s).

### **"Reproduction"**

Includes any form of copying or publication of the whole or part of any Image whether by printing, slide projection or other display (whether or not to an audience), electronic, digital or mechanical means, use as a reference by an artist or in an artist's illustration or by any other means. Reproduction further includes the copying or distortion or manipulation of the whole or part of any Image (for example, by computer, electronically, digitally by an artist or by any other means), even though the resulting image may not appear to a reasonable person to be derived from the original Image.

### **"Release"**

Means a model or property release or any other release of a third party right or other permission which it is necessary or desirable to obtain in respect of any Image.

### **"Licence Fee"**

Means any sum or sums payable to Photographer Marko Zirdum by you in respect of the Licence.

## 2. Contracting parties

The parties to this contract are Photographer Marko Zirdum and you.

## 3. Grant of rights and restrictions

1. Photographer Marko Zirdum grants to you a non-exclusive and non-assignable right to Reproduce the Image(s) on a worldwide and perpetual basis solely as part of the following (or as otherwise agreed in writing by Photographer Marko Zirdum):
  1. advertising and promotional materials (including packaging);
  2. online or other electronic distribution systems (including web page design, but subject to clause 3.8) up to a maximum resolution of 72 dpi;
  3. broadcasts or theatrical exhibition;
  4. any products (including for-sale products) or publications (electronic or print), subject to clause 3.8; and/or

When exercising this right you must ensure any notice of copyright, trademark or other propriety right is not removed from any place where it is placed on or embedded in the Image.

2. You may alter, crop, manipulate and create derivative works from the Image(s), so long as you ensure any notice of copyright, trademark or other propriety right is not removed from any place where it is placed on or embedded in the Image.
3. The Image(s) may be shared by creating an image library, network configuration or other similar arrangement so long as no are not to share or resale to third parties for they purposes and which means that you can use them only under purchased name/trade license. *Sharing or reselling to third parties is not granted by this agreement* you must first contact Photographer Marko Zirdum to negotiate an extension of the Licence.
4. If you are an intermediary (for example an advertising agency) you may not sublicense, sell, assign, convey or transfer this Agreement or any of its rights under this Agreement but you may sub-license an Image as part of a derivative work (for example an advertisement) to your clients. Should your clients wish to incorporate the Image in their own work they should contact Photographer Marko Zirdum to purchase a licence.
5. The Image(s) as stored and shared by you must retain the copyright symbol, the name of Photographer Marko Zirdum, the Image(s)' identification numbers and any other information as may be invisibly embedded in the electronic files containing the original Image(s).
6. The Image(s) may not be distributed by a mobile phone device in a way that would allow any third party to download, extract or access the Image(s) as a standalone file.
7. You must not incorporate Images (or any part of them) into a logo, trade mark or service mark.
8. The Image(s) may not be sublicensed, resold or otherwise made available for downloading, use or distribution separately. For example, the Image(s) may be used as an integral part of a web page design, but may not be made available for downloading separately or in a format designed or intended for permanent storage or re-use by website users. Similarly, your customers may be provided with copies of the Image(s) as an integral part of work product, but may not be provided with the Image(s) or permitted to use the Image(s) separately.
9. If any Image featuring a model is used in (i) a manner that would lead a reasonable person to believe that the model personally uses or endorses a product or service, or (ii) if the depiction of the model in the Image would be unflattering or unduly controversial to a reasonable person, you must accompany each such use with a statement indicating that the person is a model and the Image is being used for illustrative purposes only.
10. Photographer Marko Zirdum does not warrant the accuracy of the captioning, keywording or any other information associated with the Image(s).
11. You may not use the Image(s) in a pornographic, defamatory, fraudulent, lewd, obscene or otherwise illegal manner, including but not limited to infringing any third party intellectual property or privacy rights, whether directly or in context or by juxtaposition with other materials.
12. You must abide by any restriction on use notified to you by Photographer Marko Zirdum before, after or at the time of delivery of the Image(s), either in the information accompanying the Image(s), the Invoice or otherwise.

13. Photographer Marko Zirdum, after reasonable notice, may inspect any records, accounts and books relating to the Reproduction of any of the Image(s) to ensure that the Image(s) are being used in accordance with this Agreement.

#### 4. Credit and Copyright issues

1. No ownership or copyright in any Image shall pass to you by the issue of the Licence.
2. Unless otherwise agreed in writing, if any Image is reproduced by you for editorial purposes (i.e., for any non-promotional purpose) you must include the credit line "(Photographer's or Agency's name)/Photographer Marko Zirdum", or any other credit line specified by Photographer Marko Zirdum. If a credit line is omitted then an additional fee equal to one hundred percent (100%) of the original amount invoiced attributable to the Image in question shall be payable by you.
3. Photographer Marko Zirdum's copyright notice and image identification reference which appear in the Image file must remain with your digital copy of the Image at all times. You will retain the copyright notice, the name of Photographer Marko Zirdum and the respective artist, the respective RF Image reference and any other information or metadata that is embedded in the electronic file that comprises any Image which you have downloaded from the Website or otherwise received from Photographer Marko Zirdum. Failure to maintain the integrity of the copyright information will constitute a breach of this Agreement.
4. In connection with the use of "Photographer Marko Zirdum" or any other of Photographer Marko Zirdum's or its partners' trade names, trademarks, logos or service marks, including the names of all Image collections ("Marks"), you acknowledge and agree that (i) such Marks are and shall remain the sole property of Photographer Marko Zirdum or its partners; (ii) nothing shall confer upon you any right of use in or to the Marks; and (iii) you shall not now or in the future contest the validity of the Marks.
5. You will immediately notify Photographer Marko Zirdum if you become aware or suspect that any third party has gained access to the Images through you, is wrongfully using the Images, in whole or in part, or is violating any of Photographer Marko Zirdum's intellectual property rights, including, but not limited to, trademarks and copyrights.

#### 5. Warranty and limitation of liability

1. Photographer Marko Zirdum guarantees that should any Image have defects in material or workmanship and these are notified in writing to Photographer Marko Zirdum within thirty (30) days from the date of delivery of the Image then Photographer Marko Zirdum will either replace the Image with another digital copy of the Image free from defect or refund the Licence Fee paid by you to the extent attributable to the defective Image, at Photographer Marko Zirdum's option.
2. **Photographer Marko Zirdum makes no other warranty, express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Neither Photographer Marko Zirdum nor its contributors shall be liable to you or any other person or entity by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Photographer Marko Zirdum, its servants or agents or otherwise) which arises out of or in connection with this Agreement, even if Photographer Marko Zirdum has been advised of the possibility of such damages, costs or losses. Photographer Marko Zirdum's maximum liability arising out of or in connection with your use of or inability to use the Image (whether in contract, tort or otherwise) shall, to the extent permitted by law, be limited to five (5) times the value paid by you for the relevant Image.**
3. The terms of clause 5.2 shall not preclude any liability or claim for death or bodily injury or any claim arising from wilful default or gross negligence on the part of Photographer Marko Zirdum or any of its employees, agents or otherwise. Each provision of clause 5.2 is to be construed as a separate limitation (applying and surviving even if for any reason one or other of such provisions is held to be inapplicable, unreasonable or unenforceable in any circumstances) and shall remain in force notwithstanding the termination of this Agreement.

#### 6. Payment

**No Reproduction of any Image is authorised until payment in full has been received by Photographer Marko Zirdum. Any Reproduction by you or on your behalf prior to payment being received by Photographer Marko Zirdum constitutes a breach of this Agreement**

**which entitles Photographer Marko Zirdum immediately to terminate this Agreement and further constitutes an infringement of copyright.**

## 7. Indemnity

You agree to indemnify and hold Photographer Marko Zirdum and its Contributors harmless against any claims, damages, losses, expenses or costs, including legal costs, arising in any manner whatsoever from your unauthorised use of any Image supplied to you by Photographer Marko Zirdum, on behalf of the Contributor, or any other breach by you of any of your obligations under this Agreement.

## 8. Release information

1. Photographer Marko Zirdum gives no representations or warranties whatsoever as to the existence of any Releases associated with the Image(s).
2. Photographer Marko Zirdum gives no representations or warranties whatsoever with respect to the use of names, trade marks, logos, uniforms, registered or copyrighted designs or artistic works depicted in any Image.
3. You must satisfy yourself that all Releases as may be required for Reproduction of the Image(s) have been secured. You are solely responsible for obtaining all such Releases and the Licence is conditional in each case on your obtaining them. If you are unsure as to whether any Releases are needed for your Image usage, then it is your responsibility to consult with relevant parties. You shall not rely upon any representation or warranty given by Photographer Marko Zirdum employees or representatives save as set out in this Agreement.

## 9. Licence fee

Use of an Image in a manner not specifically authorised under the terms set out in the Invoice or otherwise in the Agreement constitutes a breach of the Agreement and an infringement of copyright.

## 10. Licence cancellation

Provided you have not used the Image(s) you may cancel the Licence within 30 days from the date of the Invoice by sending Photographer Marko Zirdum an email with notification of the cancellation to the following address: [marko@zirdum.net](mailto:marko@zirdum.net).

- You may cancel the Licence within ten (10) days from the date of the Invoice without charge.
- If you cancel less than thirty (30) days after the Invoice date, a cancellation fee of fifty (50%) percent of the Invoice will be charged.
- **After thirty (30) days, no cancellations will be accepted and the full amount of the invoice must be paid.**

Cancelling the Licence revokes any right to publish, reproduce or use the Image(s) in any manner whatsoever.

## 11. Confidentiality

Except as required by law both parties shall procure that all confidential information disclosed by one party to the other in accordance with this Agreement or which may at any time until termination of this Agreement come into the other party's knowledge, possession or control shall not be used for any purposes other than those required or permitted by this Agreement and shall remain confidential and shall not be disclosed to any third party except insofar as this may be required for the proper operation of this Agreement and then only under appropriate confidentiality provisions approved by the other party. For the purposes of this agreement confidential information shall include without limitation that relating to the business of a party, its business systems, pricing, trade secrets, business processes and client and supplier lists. These obligations

of confidentiality shall cease to apply to any particular item of confidential information once it becomes public knowledge other than by any act or default of either party.

## 12. Interest on overdue invoices and reasonable recovery costs

0. Unless otherwise agreed by us in writing, all Invoices are payable by you within 30 days.
1. If you do not make full payment of an Invoice on time we reserve the right to charge interest on the outstanding amount at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the date payment was due until payment is made.

## 13. Condition of Images

You should make sure that you examine the Image(s) for possible defects (whether digital or otherwise) before sending the Image(s) for Reproduction. Subject to clause 5.1, Photographer Marko Zirdum shall not be liable for any loss or damage suffered by you or any third party arising from any alleged or actual defect in any Image or its caption or in any way from its Reproduction.

## 14. Downtime

Due to the nature of server provision, downtime and lost transmissions may occur as part of routine maintenance. You are advised to maintain a copy of your account status and details of Image(s) purchased.

## 15. Miscellaneous terms

0. The Licence will terminate immediately if you (a) enter into voluntary or compulsory liquidation, (b) have a receiver appointed or (c) fail to perform any of your obligations under the Agreement within 28 days of our giving you notice to comply. In the event of termination, all rights granted will immediately revert to us and any further exploitation of any Image shall constitute an infringement of copyright.
1. No variation of any of these Terms shall be effective unless in writing and signed by Photographer Marko Zirdum and you. No action of Photographer Marko Zirdum, other than an express written waiver, may be construed as a waiver of any clause of this Agreement. In the event that Photographer Marko Zirdum waives any specific part of this Agreement, such fact does not mean that any other part is waived. In the event of any inconsistency between the Terms and the terms contained in any purchase order or other communication sent by you, the terms of this Agreement shall prevail.
2. Should any clause of this Agreement be found unenforceable, that will not affect any other clause and each will remain in full force and effect.
3. This agreement, its validity and effect, shall be interpreted under and governed by the laws of England and be subject to the exclusive jurisdiction of the English courts. If Photographer Marko Zirdum is required to enforce its rights as a result of any breach of these terms, whether legal proceedings are commenced or not, you agree to indemnify Photographer Marko Zirdum in respect of all reasonable legal fees and costs incurred by Photographer Marko Zirdum in relation thereto.