

Zest4.TV Limited

TERMS AND CONDITIONS OF BUSINESS

GENERIC TERMS (APPLICABLE TO ALL PROJECTS AND EQUIPMENT HIRES)

Definitions

1. The following definitions shall apply:

“Zest4TV” means Zest4.TV Limited, Unit 4 Tims Boatyard, Timsway, Staines, Middlesex TW18 3JY, its director(s), employees and any freelance crew retained by it on the project to which these terms are being applied;

“Client” means the person(s), firm or company requesting and/or receiving services from Zest4TV or renting the Equipment;

“Equipment” means the equipment (together with any accessories) specified on any Rental Agreement provided by Zest4TV to the Client, and the flight cases used to house such equipment and accessories;

“On Location” means the period between the call time issued by the Client and the time the crew member is permitted to leave the location by the Client, provided there is no more than one (1) hour travel time to to/from TW18 3JY or the location is within the M25 motorway. For projects outside the M25 motorway with more than one (1) hour’s travel time, the crew member is considered to be On Location one (1) hour after leaving TW18 3JY until one hour prior to arriving back at TW18 3JY; and

“Rental Agreement” means the written document provided by Zest4TV to the Client, which sets out a list of the Equipment to be hired by the Client

Quotes and estimates, pencil bookings and confirmations

2. Quotes are valid for one month from date of issue. Thereafter Zest4TV reserves the right to amend a quoted price. While we make every effort to ensure they do not occur, errors and omissions are excepted.
3. Estimates are only an indication of the likely cost of a project or hire, and Zest4TV will not be bound in any way by the pricing provided in such estimate.
4. All works undertaken, or Equipment provided, will be as per Zest4TV’s written quotation or estimate (as relevant), provided the Client is obliged to ensure that this is thoroughly read and understood prior to booking. Any amendments or additional time filming or editing will be charged at our daily or hourly rate (as relevant).
5. Pencil bookings for projects and Equipment rentals must be confirmed in writing, preferably by email. Once confirmed, Zest4TV reserves the right to impose the following cancellation charges where notice of cancellation is provided within the specific periods and no other work has been found to replace the work penciled by the Client:

<u>Notice of Cancellation</u>	<u>Percentage of Quoted Fee Payable</u>
Within 72 to 48 hours of call time*	25%
Within 48 to 24 hours of call time*	50%
Within 24 hours of call time*	100%

*Call time is either that provided by the Client or, if not specified, 9am.

6. If a quotation is accepted and subsequently cancelled by the Client then, where costs in either time or money have already been incurred, Zest4TV reserve the right to charge up to 100% of the original quoted price.

Charges, taxes and credit accounts

7. Unless agreed otherwise, all out-of-pocket expenses (including, but not limited to, accommodation, meals, congestion charges, road/tunnel/bridge/ferry tolls, excess baggage charges and car parking) will be charged at cost and mileage to/from Client premises and/or location will be charged at £0.45/mile from TW18 3JY.
8. Courier and Royal Mail Special Delivery items are charged at net cost plus 15% to cover administration, packaging, handling and booking.
9. The Client shall pay VAT (at the prevailing rate) on the full invoice value.
10. Any disputes on an invoice must be raised by the Client within seven (7) business days of receipt of the invoice. Thereafter no disputes will be entered into.
11. If the Client makes default in any payment then Zest4TV shall have a lien for any amount outstanding to Zest4TV on any property of the Client which may remain in the possession of Zest4TV or its agents.
12. Clients requesting a credit account must submit: (a) details of two (2) referees (being two (2) other suppliers); (b) details of the Client's bank; (c) for equipment hire, a valid insurance certificate (see Equipment Dry Hire section below for more details) and (c) an email address to which all invoices and statements can be submitted.
13. Zest4TV may use credit reference agencies to check the credit worthiness of the Client, and the Client agrees that Zest4TV may give such agencies details and information about the Client from time to time including information on the payment record of the Client with Zest4TV.
14. New clients, and clients without a credit account, may be required to pay 100% of the quoted total in cleared funds, in advance of project or rental commencement. Account clients have thirty (30) days from the date of issue of our invoice to pay.
15. For invoices not paid within credit terms, the following conditions apply:
 - a) Thirty (30) days after the date of issue of an invoice, Zest4TV reserves the right to exercise its statutory right to claim interest and debt recovery costs in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
 - b) Fifty (50) days after the date of issue of an invoice, Zest4TV will automatically issue an invoice for interest and debt recovery costs on the outstanding invoice balance.
 - c) Ninety (90) days after the date of issue of an invoice, Zest4TV will automatically commence action in the County Court to recover the amount of the outstanding invoice balance and any associated interest and costs.
 - d) If the Client is a limited company and defaults in payment of any sum or sums payable to Zest4TV for a period of more than ninety (90) days from the invoice date, the director(s) of the Client will (upon written request by Zest4TV) pay such sum or sums as may be outstanding. In the event of there being more than one director, this guarantee and the obligations and liabilities of the Client shall be construed and having effect on those directors as joint and several obligations and liabilities.

Delivery

16. Unless otherwise agreed in writing, time is not of the essence under any agreement between the Client and Zest4TV, but Zest4TV will use reasonable endeavours to execute orders and to effect delivery in a reasonable time. Any time or date for delivery made by Zest4TV or its representatives is an estimate only, and Zest4TV shall not be liable for the consequences of any delay.

Terms specific to filming

17. Unless agreed otherwise, for video production projects, lighting cameraman, soundman and other crew overtime will be charged at one tenth of the daily rate after ten (10) hours, calculated from

standard day rates and not discounted rates. A standard day is ten (10) hours On Location.

18. Unless agreed otherwise, for audio-visual/live event projects, camera operator, director, vision mixer, engineer and other crew overtime will be charged at one twelfth of the daily rate after twelve (12) hours on site, calculated from standard day rates and not discounted rates. A standard day is twelve (12) hours On Location.
19. In the event of inclement weather, Zest4TV reserves the right to change the date of filming to a more suitable day. Zest4TV will not allow the safety of any equipment or personnel to be compromised.
20. In the event of filming being delayed or aborted due to a lack of organization from the Client, Zest4TV reserves the right to charge the relevant day's filming costs plus any overtime. A re-visit to site to carry out further works may incur additional costs.
21. If the Client is organising filming locations, it is the Client's responsibility to ensure that Zest4TV has clear access to all relevant locations throughout the day. Delays in filming may incur additional charges.

Terms specific to post-production

22. Unless agreed otherwise, on all projects, editor overtime will be charged at one eighth of the daily rate after eight (8) hours, calculated from standard day rates and not discounted rates. The standard day for an editor is eight (8) hours, whether in Zest4TV's in-house edit suite or On Location.
23. On the majority of projects, a "draft" version of the production will be forwarded to the Client for their review. This draft may receive one set of minor revisions only, which is included in the original agreed cost. Subsequent revisions thereafter or a major re-edit will incur an additional standard daily or hourly editor rate (plus edit suite hire rate, if one of the Zest4TV edit suites are being used).
24. Zest4TV will retain all files relating to a project for a period of six (6) months after completion of a project (which is normally indicated by submission of our final invoice for a project). Thereafter Zest4TV reserves the right to delete the project from its systems. An archiving service is available, and Clients should ask for more details on this.

Copyright

25. Zest4TV solely owns the copyright in all material that has been captured or created by Zest4TV. Upon completion of a project, and upon receipt of cleared funds for the entirety of the monies owing for such project, Zest4TV will (upon prior written agreement) transfer the copyright ownership to the Client.
26. Where the Client provides material (of whatever nature, including (but not limited to) video, audio, photographs and PowerPoint presentations) to Zest4TV for inclusion in a production, the Client must obtain a licence for both the Client and Zest4TV to use that material from the copyright owner. The Client will indemnify Zest4TV against any future third party claims, disputes, expenses or similar that may arise from the use of such material.
27. Unless agreed otherwise, Zest4TV reserves the right to use the footage/material/media either in sections or in its entirety for promotional purposes.
28. Zest4TV recommends Clients to use and enforce performer release forms. Zest4TV will accept no discounts or liability if the production must be re-edited due to a performer refusing permission to show their image or use their audio in whatever form.

Public liability insurance

29. Zest4TV carries public liability insurance of £2million. Upon request, upgraded specific project insurance cover can be provided. Zest4TV reserves the right to charge the additional cost on to the Client.

Health and safety

30. Zest4TV reserves the right to remove any of its personnel and/or equipment from a location if it is deemed unsafe or if they are subjected to abusive or aggressive behaviour. In this instance, the Client will be liable for any costs incurred as a result. Zest4TV will observe the Client's site safety rules all all times (provided these have been adequately brought to the attention of Zest4TV) and will liaise with the appropriate Health and Safety Manager if necessary.

Limitation of liability

31. Zest4TV may help, advise and recommend equipment to Clients for a project, but any guidance or advice will not in any circumstances render Zest4TV liable for the inability of the Equipment to perform the tasks for which it was recommended, ordered and/or provided.
32. In the unlikely event that Zest4TV experiences equipment failure or difficulties, all efforts will be made to find suitable replacement equipment as soon as possible. The equipment used on the day of filming will be at the discretion of the senior member of crew. No further claims or liability will be accepted.
33. No liability is accepted for failure of performance of Zest4TV due to any other circumstances outside the control of Zest4TV.

Miscellaneous

34. All invoices, notices, demands or any communication from Zest4TV to the Client shall be regarded as having been properly delivered to the Client if:
- a) posted by first class post to the Client; or
 - b) left at the trading address of the Client; or
 - c) sent by email to the Client contact (and no bounced email message has been received)
- and shall be regarded as having been delivered the day after dispatch.
35. Any Rental Agreement and these terms and conditions shall be construed in accordance with English Law and the parties herein submit to the jurisdiction of the English Courts.

EQUIPMENT DRY HIRE

Confirmation of hire, equipment condition and delivery/collection

36. The Rental Agreement is subject to the terms and conditions set out below, and supersedes all previous written or oral agreements or contracts between the parties. Any additional contract clause shall only apply if previously agreed in writing by Zest4TV. In the case of any conflict between such additional clause and these terms and conditions, the latter shall prevail.
37. All oral communications between Zest4TV and the Client shall be confirmed in writing within two (2) days. Zest4TV shall not be liable for the consequences of any inaccuracies or misunderstandings caused by the Client failing to confirm his order in writing or the correspondence being lost in the post or internet.
38. The Equipment shall be delivered and collected at a time and place mutually agreed between Zest4TV and the Client. Zest4TV will endeavour to comply with any delivery schedules but will accept no liability for failing to do so in circumstances beyond its control. The signature of any person purporting to be any employee or representative of the Client shall be sufficient evidence of delivery. When the Equipment is delivered to or collected by the Client, the Client or his representative, shall sign the Rental Agreement presented by Zest4TV and, in doing so, shall accept that the Equipment has been delivered in good working order and as specified in the Rental Agreement.
39. Zest4TV will endeavour to ensure that the equipment rented to the Client is in good working order and condition at the time of delivery to or collection by the Client. It is the responsibility of the Client to ensure that the Equipment is suitable (including type and condition) for the purpose for

which it is rented. The Client shall ensure that the Equipment is operated in a professional and safe manner and is required to store and operate it in a secure and suitable place.

Use of equipment

40. The Client will not open the outer case or remove any circuit board, label, sign or serial number on the equipment and will not expose the Equipment to the elements (in particular to salt water, spray and soil) and will keep the Equipment protected in all respects. All servicing and repairs must be made by Zest4TV. The Client is responsible for any loss and/or damage to the Equipment caused by carelessness, misuse or incompetence and will be charged with the full cost of repair or full replacement value of the Equipment, as the case may be. The Client must not repair, or attempt to repair, or request a third party to repair or attempt to repair, the Equipment.
41. Unless otherwise agreed in writing between Zest4TV and the Client, it shall be the responsibility of the Client to return the equipment to Zest4TV on termination of the rental. If Zest4TV agrees to collect the equipment on termination of the rental, the Client shall remain fully responsible for the safety, protection and condition of the equipment until it is in the possession of Zest4TV.
42. The Equipment shall not be used in any abnormal or hazardous assignment, or taken on any flight or outside the boundaries of the United Kingdom unless authorised to do so, in writing, by Zest4TV. The Client shall be solely responsible for obtaining all customs clearances, licences and permits as shall be necessary to take the Equipment out of the United Kingdom. If any Equipment taken out of the United Kingdom is lost or is damaged or breaks down and Zest4TV agrees to replace the same, Zest4TV's liability shall only extend to delivery of any replacement at an address in the United Kingdom.

Rental and other charges

43. During the period of rental set out in the Rental Agreement (or otherwise agreed by the parties), the Client shall pay Zest4 rental fees, as outlined and agreed on the Rental Agreement. The Client shall be liable for payment of rental charges as from the commencement of the rental period until a time not less than 24 hours later. In this agreement, a hour period or part constitutes a 1 day rental.
44. Delivery charges (if any) will be specified on the Rental Agreement.
45. All rental or other charges will be calculated on a weekly basis and unless previously agreed in writing will be payable within thirty (30) days from the date of issue of the invoice. Zest4TV will exercise its statutory right to claim interest and debt recovery costs in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
46. Zest4TV reserve the right to charge a cancellation fee not exceeding the full rental amount of the agreement, in accordance with Clause 5 above.

Equipment ownership

47. The Equipment remains at all times the property of Zest4TV and the Client shall have no right, title or interest in it except that granted by Zest4TV under the terms of this agreement. The Client shall not sell, offer for sale, assign, mortgage, pledge, underlet, lend, hire, rent or otherwise deal with the equipment in part or full. The Client shall keep the Equipment in his own possession for his own use.
48. The amount of deposit (if any) specified in the Rental Agreement shall be deducted from the invoice when the equipment has been returned to Zest4TV undamaged and in full working order.

Termination

49. Zest4TV will terminate the agreement by written notice and reserve the right not to enter into further agreements under the following circumstances:
- the Client fails to pay any charges later than 30 days from the invoice date;
 - the Client fails to observe any of the conditions contained in this agreement; or
 - the Client declares himself bankrupt or goes into liquidation or has a receiver appointed or is subject to a receiving order.
50. The termination of the Rental Agreement for any reason whatsoever shall not affect the right of Zest4TV to recover any rental charge or monies or damages from the Client.
51. Any changes made to the Rental Agreement (including, but not limited to, any time or other indulgence granted by Zest4TV to the Client) shall not affect the rights of Zest4TV under the terms and conditions of this agreement.

Claims and sub-contracting

52. Zest4TV shall not, in any circumstances, be liable to the Client or any third party for any claims in respect of loss of profits, special damages or any consequential loss whatsoever, or be under any liability for loss or damage to persons or property howsoever caused, whether arising directly or indirectly from the rental or use of the Equipment by the Client.
53. Zest4TV reserves the right to sub-contract all or any part of the Client's order and to assign or otherwise deal with in any way whatsoever the interest of Zest4TV in the Equipment and in the agreement.
54. The Client uses original or unique material in connection with the Equipment at his own risk. Zest4TV will not under any circumstances accept any responsibility for loss or damage to this material.

Insurance

55. Prior to commencement of the hire, the Client must have arranged (in its own name) and commenced insurance against "all risks" for the full replacement value of the Equipment and given full details thereof to Zest4TV. Such insurance must, without limitation, insure against:
- all loss or damage to the Equipment whilst in the Client's possession and whilst in transit to/from Zest4TV premises, including theft from an unattended vehicle, to an amount at least equal to its new replacement cost;
 - all third party liability;
 - failure of equipment hired from Zest4TV causing the shortening or abandonment of the shooting period; and
 - Zest4TV's loss of revenue at a rate equal to the standard (not discounted) rental charge as agreed on the Rental Agreement, until the Equipment is repaired or replaced or funds totaling the value of the Equipment are accepted by Zest4TV in settlement.
56. If, for any reason whatsoever, the insurers of the Equipment refuse to settle any claim made in respect of the Equipment under such insurance policy, the Client shall be liable to pay Zest4TV (immediately upon receipt of a written demand from Zest4TV), the balance of such claim plus (after seven (7) days from receipt of such demand) interest calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
57. Where Zest4TV supplies the services of a technician or other person, Zest4TV shall not be liable for any failure, loss or damage of any kind on the part its employees or representatives. The Client shall ensure there is a safe working environment for that that technician or other person and shall indemnify Zest4TV against any claim made by any such person arising out of any injury or loss suffered by him whilst under the control or direction of the Client or its servants or agents.