

TERMS AND CONDITIONS OF POST PRODUCTION

1. Definitions and Interpretation

1.1 In the Contract

"Charge" means the charges agreed between the parties for the provision of pre/post production facilities

"Company" means Films at 59 Ltd, whose principal place of business is 59 Cotham Hill, Bristol BS6 6JR.

"Contract" means this agreement and any documents ancillary thereto.

"Customer" means the person, persons or company using the services of the Company

"Quotation" means the quotation addressed to the Customer including any amendment in writing from the Company which shall lapse 30 days from the date of such Quotation unless accepted in writing by the Customer before the expiry of such 30 days or the use of post production facilities has commenced.

"Booking" means the booking period for which the Company has agreed to provide the Facilities to the Customer;

"Customer's Property" means any of the Customer's works, tapes, films, media or other materials, equipment or other property which is the subject of the Facilities and is provided to the Company;

"Facilities" means the pre/post-production equipment, personnel, creative and production facilities and services which the Company is providing to the Customer in accordance with these terms and conditions;

'Materials' means all tapes, memory cards, hard drives, films or other materials or property provided by the Company pursuant to a Booking.

2. Application of Terms and Conditions

2.1 All dealings between the Customer and the company will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document and including any term implied by law, so far as is possible), trade, custom, practice or course of dealing.

2. Rates, Fees and Charges

2.1 The rates charged by the Company are those that are published from time to time in the Company's rate card. The rates quoted do not include Value Added Tax, all media stock, courier and delivery charges, meals and long distance telecommunications expenses, and any such VAT or external expenses shall be paid by the Customer.

2.2 The Company reserves the right to change the rates quoted in the rate card at any time without prior notice.

3. Estimates

3.1 Whilst all the time and prices estimates given by the Company are given in good faith

and the Company will endeavour to adhere to such estimates, the Company will not be bound by such estimates where they are not met due to the Customer's changes or other circumstances outside the Company's control and the Company will not be liable for any failure to meet such estimates. The Company will not be responsible for any costs, charges or expenses incurred by the Customer as a result of such failure.

4. Payment

4.1 Unless the Customer has an approved credit account with the Company, all Charges must be paid prior to provision of any Facilities. Any Customer wishing to open a credit account with the Company must submit a completed credit account application form for consideration by the Company together with any documents requested by the Company. The Company may give credit entirely at its discretion and may refuse or withdraw credit without specifying any reason.

4.2 If the Company has approved the Customer's credit account unless otherwise agreed in writing:-

4.2.1 Payment must be made within 30 days of the date of the invoice in full without deduction by way of set off, counterclaim or otherwise. The time for payment shall be of the essence.

4.2.2 If the Customer fails to make payment on the due date then, without prejudice to any other right or remedy the Company will be entitled to:-

i) charge the Customer interest on the amount unpaid at a rate of 4% per annum over Bank of England base rate from time to time or the rate specified in the Late Payment of Commercial Debt (Interest) Act 1988, as amended, whichever is the higher

ii) claim reasonable compensation for debt recovery costs as specified in the Late Payment of Commercial Debt Regulations 2002 (or any amendment thereof) on each invoice

iii) cancel the contract for provision of Facilities with the Customer

iv) withdraw any credit facilities even if previously granted such that all sums invoiced to the Company are immediately payable

4.2.3 Payment to the Company shall not, in any circumstances, be dependant upon payment to the Customer from any third party.

4.3 Any queries on the invoice must be raised within 14 days of the date of the invoice.

5. Cancellation

5.1 In its absolute discretion, The Company may at any time permit cancellation by the Customer of a Booking or order and reserves the right to cancel any Booking or order in the event of any breach of these terms and conditions by the Customer.

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5.2 In the event of any such cancellation being permitted or instigated by the Company less than one full 24 hour working day before the start of the Booking, the Booking will be charged at the full rate under the Company's rate card current at the date of cancellation.

5.3 In the event of such cancellation being permitted or instigated by the Company between three and one full 24 hour working days before the start of the Booking, the Booking will be charged at 50% of the full rate under the Company's rate card current at the date of cancellation.

5.4 In addition to the above mentioned cancellation charges, the Company will be entitled to be reimbursed with any costs or expenses which it may have incurred with the knowledge and approval of the Customer.

6. Lien and Delivery

6.1 Until payment in cash or cleared funds of all monies due from the Customer to the Company pursuant to a particular Booking:-

6.1.1 the physical property in all Materials shall, notwithstanding delivery, remain vested in the Company;

6.1.2 The Company shall have a general lien over any property of the Customer in the Company's possession for such monies due: and

6.1.3 The licence granted by the Company to the Customer pursuant to clause (8.2) shall not take effect.

6.2 Furthermore, such property shall not pass to the Customer until the Company has also received payment in cash or cleared funds of all monies due from the Customer to the Company under any other Bookings or business transaction.

6.3 The Customer hereby grants an irrevocable licence to the Company so that it may enter upon any premises where any material are stored or where they are reasonably thought to be stored, during normal business hours, and repossess the same.

6.4 If the Customer fails to make payment within 14 days of such monies becoming due, the Company at its discretion shall be entitled to exploit or dispose of such property and apply any proceeds towards the monies due and any expenses in respect of such exploitation or disposal and shall, upon accounting to the Customer for the balance (if any) remaining, be discharged from all liability in respect of any such property.

6.5 The Company will endeavour to deliver any Materials as soon as practicable after receipt of all sums due to the Company from the Customer but the Company shall not be responsible for any loss suffered by the Customer due to delay in delivery unless such loss shall have been caused by the gross negligence of the Company.

7. Insurance

7.1 Risk of damage to or loss of the Materials shall pass to the Customer on delivery, or if the Customer fails to take delivery, when the Company tenders delivery.

7.2 The Customer acknowledges that it is not possible for the Company to obtain insurance against any lost costs of production arising from loss or damage to the Customer's property or Materials.

7.3 Accordingly, the Customer shall take out and maintain such insurance cover against all risks as is necessary or usual in connection with production (including pre/post production), including lost production costs caused on loss or damage to the Customer's property (and its content) whilst under the custody or control of the Company.

8. Intellectual Property in Materials

8.1 All Copyright in any original recordings or other works resulting from the provision of the Facilities and/or embodied in any materials shall be vested in, and be exclusive property of, the Company.

8.2 Subject to the Company having received payment in cash or cleared funds of all monies due from the Customer to the Company pursuant to a particular Booking, the Company grants the Customer an exclusive licence to publish and transmit the finished product of the provision of the Facilities as a whole in its final form as supplied by the Company for the purpose originally contemplated.

8.3 The Customer shall have no rights whatsoever (and undertakes not) to use any Material or intellectual property rights of any type whatsoever contained in them separately from the finished product of the provision of the Facilities as a whole or for any other purpose whatsoever.

8.4 Notwithstanding anything to the contrary contained herein, the Company shall retain ownership and possession of, and shall not be required to deliver to the Customer, any mechanical devices, workflows, processes, Company know how, source or object code, audio/visual workstation timelines or sessions, or application software which are used as tools during provision of the Facilities.

9. Confidential Information

9.1 The Customer shall take proper steps to keep confidential all confidential information relating to the Company or its business or financial affairs or the Facilities or other services provided by it, including any computer programs, production techniques, databases and any original ideas and concepts, know-how, workflows, designs and processes incorporated in or inherent in the Booking, which information is disclosed to or obtained by the Customer pursuant to or as a result of the provision of the Facilities (other than

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information in the public domain other than by reason of a breach by the Customer of this provision)

9.2 The Customer will not use or divulge any confidential information to any person (other than its professional advisers) and upon the termination of the Booking, the Customer will return to the Company any confidential information (without retaining copies thereof) and any equipment or other provided by the Company (other than, for the avoidance of doubt, the Materials).

10. The Company's Liability

10.1 Save as otherwise expressly provided in these terms and conditions and to the fullest extent permitted by law:

10.1.1 The supply to any Customer of Materials and facilities are entirely at the Customer's risk and the Company shall be under no liability to the Customer or any other person for any direct, indirect or consequential loss or damage arising from any defect in the facilities and the materials or any equipment or tapes used in relation thereto;

10.1.2 If the use of the facilities for the Booking is delayed, postponed, curtailed or cancelled for any reason affecting the Company, then unless such delay, postponement, curtailment or cancellation shall have been caused by the gross negligence of the Company, the Company shall not be liable for any loss or damage suffered by the Customer by reason thereof;

10.1.3 The Company shall not in any event be liable for economic loss (including loss of profit or goodwill) or any indirect or consequential loss or damage; and

10.1.4 All warranties, conditions, terms and representations relating to goods or services supplied by the Company (whether expressly or implied by statute, common law, use or otherwise) are hereby excluded.

Nothing herein shall be construed as excluding or limiting (or seeking to do so) any liability on the part of the Company by reason of death or bodily injury caused by The Company's negligence.

10.2.1 Save as otherwise expressly provided in these terms and conditions and to the fullest extent permitted by law, the Company will not be responsible for any damage to or loss of any Customer's property or Materials held by the Company nor any loss (consequential or otherwise) arising in respect thereof, unless caused by the Company's negligence in which case paragraphs (10.2.2) and (10.2.3) shall apply;

10.2.2 In the event of loss or damage to the Customer's property or Materials caused by the Company's negligence during the Booking the Company's liability shall be limited to the cost expended by the Customer in fees and charges

charged by the Company and shall not exceed £50,000 in respect of any one project.

10.2.3 If the Customer shall notify the Company during the Booking that the Materials are valued by the Customer at a stated sum which exceeds the figure stated in paragraph (10.2.2) and shall agree to reimburse the Company with the cost of effecting special insurance cover for the Materials during such Booking in the sum stated by the Customer in such notice, the limitation of liability shall be the sum stated by the Customer and the figure in paragraph (10.2.2) shall not apply.

10.2.4 Subject to the above provisions of this paragraph (10.2), all of the Customer's property and all Materials held by the Company will be held by the Company entirely at the risk of the Customer, irrespective of the cause of any loss or damage and the Customer should insure the Customer's Materials to their full value against all risks and take and retain copies of all Customer's Materials before providing them to the Company.

10.3 The Company shall make available its equipment and the personnel it deems necessary to operate such equipment but the Customer shall satisfy itself that the facilities are suitable for its purpose and while the Company will use its best endeavours to ensure that all equipment and Facilities perform in accordance with the specification for such equipment and Facilities unless expressly agreed in writing at the time of the acceptance of the Booking, the Company shall not be responsible for ensuring that its equipment and the Facilities provided by it are suitable for the Customer's purpose.

10.4 The Company shall not be liable for any reduction in the quality of its services due to full or partial failure of any internet connection used to provide those services or of any internet connection used in the process of a Booking or employed in the use of Facilities by the Customer.

10.5 The Company shall not be liable for any reduction in the quality of its services that may be caused by the quality of the Customer's Materials or the Company's adherence to the Customer's instructions.

10.6 The Customer shall indemnify the Company, its directors, and employees, servants, sub-contractors and agents all liabilities, actions and losses, claim, proceedings, judgement, damages, obligations, costs and expenses of any nature what- so ever (including, but not limited to, legal fees, costs and expenses) arising directly or indirectly out of or in connection with the Customer's Materials or the acts or omissions of the Customer, its servants, agents or representatives, or any breach by the Customer of any of its representations, warranties other obligations in these terms and conditions (including, but not limited to, claims

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by any third party for breach of copyright or defamation relating to any Materials or Customer's property or any failure by the Customer to observe the provisions and requirements of any applicable agreements).

11. Non Collection

11.1 The Company shall be entitled to destroy, erase or otherwise dispose of as it thinks fit any Materials or Customer's property in its possession and uncollected by the Customer after the expiration of six months from the end of the Booking, and while uncollected by the Customer, such materials or Customer's property shall be held by the Company at the Customer's risk as stated above.

12. Transfer Of Obligations

12.1 The Company reserves the right to assign or sub-contract all or any part of its obligations to the Customer.

12.2 Any contract which is made between the Company and the Customer is personal to the Customer, who shall not assign or charge the benefit thereof without the express prior written consent of the Company.

13. Representation And Warranties

The Customer represents and warrants to the Company that:-

13.1 Before the commencement of the Booking it will obtain all consents licences and clearances required from the performers, copyright owners and any other person having any right or interest in connection with any of the Customer's Materials and

13.2 Nothing contained in the Customer's property will be defamatory, offensive, obscene or otherwise unlawful or in breach of any intellectual property or any other right of any third party.

14. Force Majeure

14.1 The Company shall not be under any liability to the Customer as a result of the Company being unable to perform any of its obligations or comply with any of the Customer's instructions due to circumstances beyond its reasonable control, including but not limited to, industrial action taken by any person or persons, and if the Company is so unable, it shall at its option either be entitled to perform such obligations or comply with such instructions as and when it is reasonably able to do so or to treat itself as wholly or partly released from all such obligations or instructions liability.

15. Termination By The Company

15.1 Either party shall be entitled to immediately terminate the Contract on giving written notice to the other if:

15.1.1 That other party commits any material breach of these conditions and, in the case of

such a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied (for the avoidance of doubt any late payment or failure to pay by the Customer any sums due shall be a material breach); or

15.1.2 That other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or partnership) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or

15.1.3 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of that other party; or

15.1.4 That other party ceases, or threatens to cease, to carry on business.

15.2 On termination the Customer shall pay to the Company all costs and expenses due under the Contract.

15.3 Neither party shall have any right to claim for any loss or damage occasioned by such termination, which shall be without prejudice to any accrued rights and remedies of either party.

16. Notices

Any notice to be given in accordance with this Contract shall be deemed to be properly given if delivered by hand or sent by prepaid post or email or facsimile to the party concerned at the address or email address or facsimile number as set out on the Quotation or to such other address, email or facsimile number as may be communicated from time to time in writing to the sender of the notice. Notices sent by prepaid post shall be deemed to have been received three working days after the date of posting. Notices delivered by hand shall be deemed to have been delivered upon receipt. Notices sent by email or facsimile shall be deemed to have been received if sent before 4pm on any working day on that day and if sent after 4pm on any working day on the first working day following the date of sending as the case may be and in both cases provided the sender has retained a successful transmission receipt.

17. Proper Law

This Contract shall be governed and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

18. General

18.1 No variation to the Contract will be binding unless agreed in writing between the Company and the Customer.

18.2 This Contract is the entire agreement between the parties and supersedes any previous agreement in relation to its subject

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matter. The Customer acknowledges and agrees that in entering into this Contract it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract and its only remedy for breach of this Contract shall be for breach of contract under the terms of this Contract.

18.3 The Company shall not be liable for any delay in performing or any failure to perform any of its obligations under this Contract caused directly or indirectly by any event beyond its reasonable control.

18.4 Neither party shall without the prior written consent of the other party assign, transfer, charge or deal in any other manner with this Contract or its rights under it or part of it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Contract.

18.5 If any part of the Contract becomes invalid, illegal or unenforceable it shall be severed from the Contract and the remainder of the Contract shall remain in full force and effect.

18.6 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that act.

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