

# Production Terms and Conditions

## Section 1 – General

### 1.1 DAY AND HOURLY RATES

A day is charged at £350 and an hourly rate is charged £35.00 per hour or part of thereafter. Travelling is charged at 45p per mile.

### 1.2 INTELLECTUAL PROPERTY RIGHTS

"IPRs" means all patents, trademarks, design rights, trade or business names (including domain names) and logos, registered designs, copyright (including, without limitation, rights in computer software) moral rights, database rights, format rights and topography rights (including code, data and documentation), whether or not any of these is or are registered and including, without limitation, applications for registration and patent disclosures and inventions), know-how, trade secrets and other confidential or proprietary information and all rights and forms of protection throughout the world of a similar nature or with similar effect to any of these for the full term of such rights and all extensions, renewals or continuations thereof and copies and tangible embodiments of any or all of the foregoing (in whatever form or medium).

### 1.3 APPLICABLE LAW

This engagement letter shall be governed by, and construed in accordance with, English law. The Courts of England shall have non-exclusive jurisdiction in relation to any claim, dispute or difference concerning the engagement letter and any matter arising from it.

### 1.4 VARIATIONS

No person working for 'The Producer' has the power to vary these 'Terms and Conditions' orally.

No changes or modifications will be made to this contract without the written agreement of both parties.

If any provision in this Agreement is held illegal, invalid or unenforceable such illegality, invalidity or unenforceability will not affect the other provisions of this Agreement, which shall remain in full force and effect.

### 1.5 REORDERS

All reorders shall be treated as an extension of this contract and no responsibility for errors will be accepted unless orders are given in writing.

### 1.6 COMPLAINTS/SHORTFALLS

'The Client' in writing must raise complaints or shortfalls, within 14 days of programme delivery or collection.

### 1.7 FORCE MAJEURE or ACT OF GOD

If either party is unable to perform any of its obligations under this Agreement due to any circumstance of force majeure, that is an event which is out of the control of either party (including, without limitation, wars, governmental controls or restrictions, natural disaster, riot, civil commotion, act of terrorism or act of God) that party shall notify the other party, in writing of the reason for the delay. In this case, the performance of that party's obligations under this Agreement shall be suspended whilst the circumstances of the force majeure exist.

All costs arising from the delay shall be borne by the party incurring those costs. If the delay continues for more than 60 days then either party may terminate the Agreement by giving notice in writing.

### 1.8 LIMITATION OF LIABILITY

In the unlikely event of a total failure or cancellation of this contract by either party, whether caused by negligence or in any other circumstance, the liability of one party to the other shall be limited to the total value of the contract. Except that nothing in this agreement shall limit or exclude liability for death, personal injury or for fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law. Neither party shall be liable for indirect or consequential loss.

### 1.9 TERMINATION

Without prejudice to its right to terminate for breach, 'The Client' may cancel this contract, in whole or in part, at any time by giving written notice to 'The Producer' but in doing so shall forfeit any monies paid. Should any cancellation be received by 'The Producer' less than 2 weeks prior to the initial date of filming 'The Client' shall in addition pay a sum equal to 40% of the contract value of the cancelled item or items. The said sum shall be payable as compensation as an estimate of the loss 'The Producer' would suffer. For the avoidance of doubt, in the event that 'The Client' terminates by reason of 'The Producer's' breach of this Agreement, 'The Client' shall be entitled to a refund of all monies.

In the event of a material breach of the terms and conditions of this contract by either party, or a material change to 'The Programme' content, the contract may be cancelled. In the event of such an occurrence, the cancelling party shall serve notice in writing on the other party allowing 14 days for that party to remedy the material breach complained of in the notice. Failure to remedy the material breach within those 14 days shall result in termination of this Agreement pursuant to this Clause.

### 1.10 DISPUTES

In the event of any dispute between the parties arising from and/or in connection with this Agreement the parties will meet in good faith with a view to resolving any such dispute without recourse to legal proceedings.

If the dispute cannot be resolved as a result of such meeting the 'Institute of Videography' will be called upon to act as a neutral advisor with a view to achieving a fair and amicable settlement between the parties.

The 'Institute of Videography' shall be invited by both parties to provide a non-binding but informative opinion on the dispute in question in writing. As between the parties, any fees payable to the 'Institute of Videography' shall be met by the parties in equal shares regardless of the nature of the opinion provided.

If the parties fail to settle the dispute amicably within 30 days of the 'Institute of Videography' providing its opinion, the dispute may be referred to the English courts (which shall have non-exclusive jurisdiction in relation to any such dispute).

## Section 2 – Copyright

### 2.1 COPYRIGHT RECOGNITION

'The Client' hereby acknowledges that 'The Producer' is owner of all IPRs arising in or under The Programme, the Master Programme and all underlying and related materials including without limitation scripts, formats, graphics, diagrams and other materials produced in performance of this agreement. 'The Producer' acknowledges it is acting under a contract for services. Both parties, in performing their obligations under this agreement, shall comply with all applicable copyright law.

2.2 All IPRs in the Programme, Master Programme, Glass Master and any and all other materials produced by 'The Producer' in performance of this Agreement ("**the Materials**") shall vest entirely in 'The Producer'.

2.3 To the extent such IPRs do not automatically vest in 'The Producer', 'The Client' hereby assigns, including by way of present assignment of all present and future rights, to 'The Client' all such IPRs in the Materials. The parties shall execute all documents necessary to give effect to this Clause [2.3].

2.4 'The Client' hereby waives to the fullest extent permitted by law its entire moral rights (if any) in or to the Material.

2.5 'The Producer' undertakes to comply with any reasonable instructions of 'the Client' in relation to use of 3<sup>rd</sup> party materials. 'The Producer' shall indemnify the 'Client' against all losses resulting from the 'The Producer's' failure to comply with Client's instructions in this respect.

2.6.1 The 'Client' hereby warrants that 'the Client' shall not require 'The Producer' to act in a way which will infringe, and will not supply any materials for use by 'The Producer' which will infringe any valid third party copyrights or patents.

2.6.2 'The Client' shall defend, at his own expense, any claim brought against 'The Producer' alleging that 'The Producer's' acts, in accordance with this agreement, and on 'The Client's' instructions, infringes any valid third party copyrights or patents (**Intellectual property Claim**) and 'The Client' shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided

That 'The Producer':

- (a) Gives 'The Client' prompt written notice of the Intellectual Property Claim;
- (b) Gives 'The Client' all information and assistance in respect of the Intellectual Property Claim as 'The Client' may reasonably require;
- (c) Grants to 'The Client' the sole authority to defend or settle the Intellectual Property Claim; and
- (d) Makes no admissions or settlements without "The Client's" prior written consent.

2.6.3 'The Client' shall have no liability for any Intellectual Property Claim resulting from:

- (a) Failure by 'The Producer' to use materials in accordance with 'The Client's' instructions; or
- (b) Provision of 'The Producer's' services other than as directed or approved by 'The Client' or otherwise in any manner not contemplated by this agreement; or
- (c) Any breach of the terms of this agreement or any negligent, unlawful or fraudulent act or omission of or by 'The Producer'.

2.6.4 The remedies set out in this Clause 2.6 shall be 'The Producer's' sole remedy in respect of any Intellectual Property Claim.

### 2.7 USE OF SUPPLIED MATERIALS

Any material submitted by 'The Client' from their own resources for inclusion in 'The Programme' is accepted on the understanding that all copyright clearances have been obtained and appropriate fees paid. In the event of such material being found not to comply with current copyright law then all resulting liabilities will be the responsibility of 'The Client'.

### 2.8 NEGATIVES/DIGITAL FILES/MASTER TAPE

Negatives/digital files/master tapes/Digital Media are the sole property of 'The Producer'.

### 2.9 STORAGE

'The Producer' will only store master tapes, sub-masters and protection copies and reserves the right to transfer them to compilation reels. We do not keep rushes indefinitely and will dispose of them after 3 years at our discretion unless previous arrangements have been arranged.

In the event Client requests extended storage, 'The Producer' reserves the right to charge for the storage of tapes and discs.

### 2.10 MASTER VIDEO MATERIAL and DUPLICATION

A copy edited master of 'The Programme' will be retained by 'The Producer' for not less than 3 Years from the production of a master DVD. No fees shall be payable for the storage of such materials.

### 2.11 PROMOTIONAL USE

Once 'The Programme' is completed and accepted by 'The Client', 'The Producer' may be granted permission for limited use of 'The Programme' for promotional purposes. 'The Producer' will respect 'The Client's' written instruction to restrict the use of any commercially sensitive information or images. Promotion will be limited to 'The Producer's' website, showreel and company brochure and 'The Producer' shall obtain all necessary permissions from owners of copyright and other rights arising in 3<sup>rd</sup> party materials included in the Materials.

## 2.12 CONFIDENTIALITY

Each party must at all times keep confidential all the other party's information (whether oral, written or in electronic form or any other form) designated as confidential or which the recipient should reasonably believe to be confidential ("**Confidential Information**") and only disclose it to those of its employees or permitted subcontractors or sub-licensees as may be necessary for the purposes of this agreement and who undertake in writing to keep the information confidential.

**This clause does not apply to Confidential Information that:**

- (a) Was in the recipient's lawful possession prior to the date of this Agreement;
- (b) The recipient can show was in its own knowledge prior to the date of disclosure;
- (c) Is disclosed to the recipient by a third party free of any obligations of confidentiality;
- (d) Is lawfully in the public domain, otherwise than by breach of this Agreement; or
- (e) The recipient is required to disclose by legislation or court order.

The provisions of this confidentiality clause shall remain in force notwithstanding expiry or earlier termination of this Agreement

## **Section 3 – Video and New Media**

3.1 The Programme and Materials shall all be of good quality, including as appropriate being of broadcast quality, and suitable for use on modern playback and broadcasting equipment.

### 3.2 ARTISTIC LICENCE

'The Producer' will be granted reasonable artistic licence regarding scenes, poses, locations etc. as applicable. Due to the vagaries of the weather and the willingness of subjects it may not be possible to capture all the images requested, but will use best endeavours to do so.

### 3.3 SPECIAL REQUESTS/COVERAGE

'The Programme' will be produced in accordance with the attached 'Programme Outline' and must be approved by 'The Client' before commencement of 'The Programme'. If 'The Client' subsequently wishes to make changes after initial script approval then 'The Client' must make such requests in writing. 'The Producer' will consider such requests and, where practicable, include them as variations to the script and/or the storyboard. 'The Client' must accept that late changes may not be possible without disruption to the schedule that may result in additional costs. Where additional costs are incurred 'The Producer' will inform 'The Client' in writing and 'The Client' must issue written acceptance before the variation is put in place.

### 3.4 IMAGES

'The Producer' shall use its best endeavours to provide a pleasing colour balance but cannot guarantee exact colour matching. It is sometimes impossible to record on video the exact colour as seen by the human eye.

### 3.5 PROGRAMME DURATION

Although 'The Producer' will do its best to produce more footage than discussed with 'The Client', there is no guarantee that any particular duration of footage will be produced, but 'The Producer' will use his best endeavours to produce a main Programme in finished form which is not less the duration as outlined in the schedule.

### 3.6 SUB CONTRACT

'The Producer' retains the right to subcontract any or all of the production of 'The Programme' in order to secure the appropriate expertise provided that 'The Producer' shall select sub-contractors of equal or superior quality of services to those offered by 'The Producer'. 'The Producer' shall be directly liable to 'The Client' for any default by the sub-contractor and no limitations of liability contained herein shall be effective against any such claim by 'The Client' against 'The Producer'.

### 3.7 DUPLICATION and FORMAT TRANSFER SERVICES

When requested and only after written assurance that copyright permission has been obtained 'The Producer' will duplicate or format transfer from 'The Client's' own masters all material as provided. Unless requested and agreed by 'The Producer' in writing errors or omissions in such material will not be checked for. 'The Client' is fully responsible for checking material before duplication or transfer.

### 3.8 MODEL RELEASE

Where required, 'The Client' should ensure that all non-professional talent provided by them and location shots specified are legally released for use in 'The Production'.

### 3.9 HEALTH & SAFETY AT WORK Act and RISK ASSESSMENT

'The Client' shall provide copies of any local safety rules and procedures, detail any special hazards and provide any necessary safety training in precautions to be taken in order for us to provide a risk assessment.

## **Section 4 – Miscellaneous**

### **4.1 PC OPERATING SYSTEMS and SOFTWARE**

Where applicable, 'The Client' is responsible for specifying playback limitations such as minimum playback system specifications, maximum data rates and operating systems, in writing. 'The Producer' shall ensure that the final programme achieves 'fitness for purpose and suitability' on 'The Clients' specified systems.

### **4.2 DVD-R PRODUCTION**

Unless stated otherwise 'The Programme' will be mastered to the UK PAL specification in a 16 by 9 aspect ratio. However, 'The Client' must be aware that there are some anomalies associated with the duplication of DVD discs that render some un-playable in certain players. To avoid complaints/returns 'The Client' is recommended to have DVD discs replicated using a professional glass-mastering process.

### **4.3 DELIVERY OF MULTIMEDIA PROGRAMS**

'The Programme' shall be deemed to be complete when 'The Client' receives one rough cut DVD or on line copy for approval or has viewed the complete programme at our facilities, as defined in 'The Programme Outline'. 'The Client' will view the rough-cut video in detail checking the programme for content and continuity. Any amendments need to be identified and formally documented within 14 days and a final cut will then be presented to the 'The Client'.

### **4.4 TECHNICAL SPECIFICATIONS**

'The Client' will be responsible for defining the technical specification of 'The Programme'. 'The Producer' will advise 'The Client' in such matters. 'The Producer' in any event undertakes to achieve the standards set out in Clause [3.1] above as a minimum.

### **4.5 ELECTRONIC COMMUNICATIONS**

Whilst all electronic data provided by 'The Producer' will be thoroughly scanned and tested at all stages of production, we still recommend 'The Client' runs a virus checker before use.

'The Producer' additionally recommends that 'The Client' should maintain an up-to-date backup of hard drive contents at all times. 'The Producer' cannot accept liability for any disruption, damage and/or loss to data or computer system as a result of data or computer programmes provided by 'The Producer'.

The exclusion of liability in the above clause shall not apply to the extent that any liability arises out of acts, omissions or misrepresentations which are in any case criminal, dishonest or fraudulent on the part of our respective partners, employees, agents or servants.

### **4.6 NOTICES**

Any notice given under this Agreement must be in writing and despatched using a delivery service where proof of delivery can be shown (such as Royal Mail Special Delivery or Courier delivery).

### **4.7 DATA PROTECTION**

'The Client' is responsible for ensuring that the rights of the individuals appearing in the programme are in compliance with the Data Protection Act. 'The Client' must be present during all shoots that involve individuals who are not considered professional talent.

### **4.8 FEES**

'The Producer's' fees for services are computed based on material costs & the time spent filming, authoring, designing, time reservations and related undertakings.

Payment terms are as follows:

- a) 1/3<sup>rd</sup> of known fees (booking deposit) payable immediately.
- b) 1/3<sup>rd</sup> of known fees payable prior to commencement of filming.
- c) Final 1/3<sup>rd</sup> of known fees payable on completion of 'The Programme' as defined in 4.3.
- d) Additional options payable on collection or prior to delivery of completed material.

All monies payable by the Customer under the Agreement shall be paid in full prior the next stage of this agreement or if more than 30 days or the due amount exceeds £1,500 an interim payment may become due.  
Quote valid for 30 days

Cheques payable to New Forest Post Production.  
For payments by BACS payment please ask for our bank details.

We reserve the right to charge interest on overdue invoices (see invoice for details).  
We reserve the right to withhold the provision of any programme material if 'The Client' has failed to pay any money properly invoiced, due and payable under the agreement.

Please note that our credit control partner will be responsible for the collection of monies due. As part of our credit control system to collect overdue accounts it may be necessary to issue a letter withdrawing all of our services until the outstanding debt is paid in full. We will not accept liability for any taxes, interest, penalties or any other claims arising due to work not being completed after this letter has been issued.

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