

FOCAL POINT MEDIA Terms of Trade & Conditions of Sale

These Terms and Conditions shall govern each and every order and shall form part of the agreement between us. No variation of any term or condition set out herein shall be effective unless agreed in writing by both parties. The headings in these Terms and Conditions are for convenience only and do not form part of the agreement between us.

1. DEFINITIONS

The words below are agreed to mean as follows:-

“Product” The product, video programme, event or new media project that we have agreed to develop and produce for you in accordance with the agreed Proposal/Budget.

“Fee” The agreed fee for the work carried out by us as set out in our Proposals/Budget.

“Intellectual Property Rights” All copyright, design rights, registered designs, trademarks, patents, confidential information, ideas, moral rights and all other rights whatsoever whether those rights are registered or not.

“Us”, “We”, “Company” The company referred to herein known as Full Turn Pictures LIMITED trading as Focal Point Media and all subsidiaries, partners and licensees.

“Delivery” When the Client receives the Product as complete.

“Deliverables” The agreed items sent to the client when the product is complete, usually electronic video files, hard drives, DVD’s, solid state media and associated paperwork.

“Client”, “You” The Company or individual placing the order for the Product.

1. APPLICABILITY OF CONDITIONS

1.1 The Company provides facilities and services only on the basis of these conditions which shall apply to all bookings, however, made or accepted, and shall form part of every contract between a Client and the Company, except insofar as otherwise expressly agreed in writing by a director of the Company acting on its behalf.

2. EXTENT OF THE COMPANY’S RESPONSIBILITY

2.1 The Company’s responsibility is restricted to providing facilities and services for production and post-production. In particular, except as may be otherwise agreed in writing by a director of the Company acting on its behalf, the Company’s responsibility does not extend to any matter normally falling within the province of a director or producer of any film, television programme, commercial, music video, or other audiovisual projects. The Client is responsible for ensuring that any film, videotape or computer programme is correct and complete in all respects as regards both form and content before use is made thereof or the same is removed from the Company’s premises (whichever is the earlier).

3. BOOKINGS, CANCELLATIONS AND CONTRACT FORMATION

3.1 Bookings may be made either by telephone or email or by letter. Every booking shall be subject to these conditions of trading and shall be at rates shown in the Company's estimate issued before or at the time of booking. The Company shall have the absolute right to change its prices at any time without prior notice.

3.2 If notice of cancellation of a booking is received by the Company less than two working days prior to the scheduled work time, the booking will be charged at full rate. If notice of cancellation is received more than two working days but less than seven days prior to the scheduled start time a charge of 50% of the full rate will be made. If notice of cancellation is received more than seven working days but less than fourteen days prior to the scheduled start time a charge of 25% of the full rate will be made. No charge shall be made for cancellations received fourteen days or more prior to the scheduled start time. For the purpose of this condition, the scheduled start time will be the hour at which any equipment or personnel of the Company or its sub-contractors is first scheduled for operational use in connection with a booking by a Client. Working days are Monday to Friday inclusive, but excluding any statutory Public Holidays. For the purposes of notification of cancellation, a day is twenty-four hours (i.e. to give two days notice of cancellation we require forty-eight hours notice).

3.3 In addition to any cancellation charge under sub-clause 3.2 above, the Company shall in the event of cancellation (whenever occurring) be entitled to charge the Client for any amounts payable to third parties in connection with the booking.

3.4 Cancellations of any bookings will only be effective if given in writing or email by the Client.

3.5 The Company reserves the right to cancel any booking whether or not any services in connection therewith have been provided by the Company in the event that the Company in its absolute discretion considers a Client's material is or might be offensive or obscene or that the copying or other reproduction thereof might infringe the rights of any third party or be otherwise illegal. Nothing herein shall constitute a penalty and the parties hereby acknowledge and agree that the cancellation charge referred to herein is a fair and proper assessment of the Company's loss.

3.6 All goods, services and facilities offered by the Company are subject to these Terms and Conditions, and no servant or agent of the Company has the right to vary these Terms and Conditions verbally or otherwise or to make any warranties and/or representations on behalf of the Company other than as expressly set out herein.

3.7 These Terms and Conditions shall be incorporated into any contract between the Company and the Client to the exclusion of any terms of business of the Client. Any dealings with the Company following receipt of a copy of these Terms and Conditions or link to the site from which they can be downloaded shall be deemed to be an acceptance by the Client of these Terms and Conditions.

3.8 Unless otherwise accepted by the Company in writing, any quotation or estimate issued by the Company shall be an invitation to treat. Any order by the Client following any such estimate or quotation shall be an offer, and a binding contract shall arise between the Company and the Client only upon the Company's clear and unconditional acceptance of the Client's order.

4. PRODUCTION

4.1 The Product shall be produced by us in accordance with our Proposals/Budget supplied to you in email and writing prior to the commencement of the contract.

5. YOUR OBLIGATIONS

5.1 You agree that you will:

5.1.1 supply us with all source materials to be provided by you for incorporation into the Product by the dates and times specified by us and in the format requested by us;

5.1.2 co-operate with us in the development and production of the Product;

5.1.3 formally approve and sign off various stages of the production process upon request by us;

5.1.4 supply us with a purchase order number, or other written instruction as evidence of acceptance of these terms.

6. PAYMENT

6.1 You agree that you will pay us:-

6.1.1 At least 50% of the of the Fee in cleared funds at time of order and prior to commencement of production, as detailed in our written proposal;

6.1.2 if stated in writing, 35% of the Fee in cleared funds at completion of principle photography and prior to commencement of post-production, as detailed in our written proposal;

6.1.3 the remaining amount of the Fee and any agreed extras payable in line with the schedule detailed in our written proposal upon delivery;

6.1.4 We do not offer account terms;

6.1.5 We may issue "pro-forma" invoices as an invitation to pay and then issue a "full" invoice when payment has been received and cleared;

6.1.6 All terms quoted and payable are exclusive of VAT which will be added where appropriate. We do not operate any duty exempt routines and VAT is payable at the current rate on all figures where appropriate;

6.1.7 When we incur out of pocket expenses on your behalf in a currency other than sterling, the re-charged exchange rates are calculated based upon an "actual costs to us" whether for credit, cash, American Express or any other type of transaction;

6.1.8 if there are delays in supply of source materials, collateral, products, services or personnel organised by you or your representatives and / or problems encountered by us in the functionality or usability of such materials or services resulting in additional costs. (You acknowledge that the Fee, time-line and delivery dates are dependant upon the availability, functionality and usability of such materials and services);

6.1.9 Our quotations may or may not include out of pocket expenses. If they are not included, then actual necessary costs will be subject to our standard agency handling fee of ten per cent (10%). No expense will be committed to without prior notification/agreement;

6.1.10 If invoices not settled with cleared funds thirty (30) calendar days after issue, we are at liberty to order the removal of any products produced for you detailed in the written proposal, that include media for which we hold copyrights, from online internet websites or broadcast channels. You will also be liable to reimburse us for any legal costs incurred in connection with recovery of any late payment under this agreement.

7. ADDITIONAL COSTS

7.1 We reserve the right to charge additional costs as follows:-

7.1.1 for amendments to the Product requested by you which go beyond the initial product specifications agreed at outset of this agreement;

7.1.2 for any third party liability incurred by us (for which a fee or cancellation fee is payable by us) as a result of changes to the specifications requested by you;

7.1.3 if you fail to meet approval dates / sign off stages of the production in accordance with our requests and additional costs arise out of such delay. (You acknowledge that changes to the Product may become more complex if you do not formally approve and sign off stages of the production process in accordance with our requests and that failure to do so may result in an increase in the Fee and / or delay in delivery dates);

7.1.4 We shall give you prior written notice of any additional costs and shall not incur such additional costs without your prior approval. Such costs shall be added to the Fee to the final instalment payable unless otherwise agreed by the parties.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights of whatever nature in material devised by us including any software code, scripts, photographic images, graphics or printed information written by us and our employees or agents will vest in and belong to us;

8.2 You agree to do what is reasonably required in order to vest all intellectual property rights in us or to evidence the same if appropriate;

8.3 We hereby grant an exclusive royalty-free licence to you to use the Intellectual Property Rights for non-broadcast, corporate use throughout Europe to a non-paying audience for the full period of protection of such rights and any extensions or renewals thereof. The licence shall take effect on receipt by us of all payments due under this agreement;

8.4 You acknowledge that we will clear the rights in all material only for the use set out above unless otherwise requested by you in writing and agreed by us in writing;

8.5 We exclude liability for any claims made against you for use of the Product in any way other than that licensed hereunder;

8.6 You hereby grant to us a non-exclusive royalty-free licence to use all materials supplied by you for the purposes of this agreement;

8.7 You hereby warrant that you have obtained all necessary rights, permissions and licences for the use of all materials supplied by you to us. For the avoidance of doubt this includes all third party or voice-over references;

8.8 You warrant that nothing in any material supplied by you is defamatory or subject to any other legal restriction;

8.9 You undertake to indemnify us fully and defend us at your own expense against all costs and losses whatsoever incurred by us, our employees or agents as a result of any claim made against us or any of them as a direct or indirect breach by you of any part of this clause.

8.10 You hereby grant to us a non-exclusive royalty-free licence to use all materials created by us, or supplied by you for inclusion in the product, for promotional purposes such as a show reel or other promotional material;

9. CONFIDENTIAL INFORMATION

9.1 Neither party to this agreement shall disclose to any third party any confidential business, information or future plans of the other party at any time acquired during the existence of this agreement and no reference is to be made to the terms of this agreement by the parties in any advertising, publicity or promotional material without the prior consent of the other party.

10. PERFORMANCE, DELIVERY OR COLLECTION

10.1 Unless otherwise agreed in writing, all times quoted for performance or delivery or availability for collection are given in good faith but are not guaranteed by the Company. The time for performance or delivery or availability for collection shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Client. Alteration by the Client of its requirements may result in a delay in performance, delivery and/or availability for collection for which the Company shall bear no liability.

10.2 Any packaging supplied by the Company, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of transport by the means specified in the agreement or as otherwise agreed. If the Client (or the intended recipient) fails to take delivery on the agreed date or to collect on the agreed collection date, or if no specific delivery or collection date has been agreed, when the goods are ready for dispatch the Company shall be entitled to store the goods and to charge the Client the reasonable cost of doing so, and to tender its account for such charges to the Client, provided that in no event shall the Company be under any liability in respect of any loss or damage following the dispatch of any goods from the Company's premises.

10.3 If the Client and the Company agree that any goods shall be delivered electronically (this constituting in each case a "Direct Delivery"), the following provisions shall apply, as relevant:

10.3.1 The Client acknowledges that Direct Delivery is not or may not be a completely secure medium of communication and that an unauthorised third party may intercept, tamper with or delete goods delivered by Direct Delivery, and that Direct Delivery may involve reliance upon third party data carriers over which the Company has no control; and

10.3.2 The Company shall have no liability to the Client or any third party for:

10.3.2.1 Any delay to any Direct Delivery or any non-receipt of goods delivered by Direct Delivery;

10.3.2.2 Any loss or damage resulting from any person gaining unauthorised access to any Direct Delivery of any goods;

10.3.2.3 Use or disclosure of any data obtained by any third party as a result of the same having gained unauthorised access to any Direct Delivery; and

10.3.2.4 Any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, Trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any Direct Delivery.

11. MORAL RIGHTS / CREDIT

11.1 You acknowledge that we assert our moral rights generally in respect of the Product under the Copyright, Designs and Patents Act 1998 and in particular to be credited on the Product in such a manner as the parties will agree. You agree not to make any substantial changes to the Product (whether by editing or otherwise) without our prior written approval.

12. PROMOTION

12.2 We reserve the right to use the Product for the purposes of our own advertising and you accept that the Product shall form part of our library of works in this respect.

13. INSURANCE

13.1 Our budget estimates are subject to an errors and omissions.

13.2 Our employees are covered by our professional liability cover.

13.3 Any goods with a significant value that are loaned to us (including in transit) in the course of the production should be detailed in writing.

13.4 We may wish to increase our insurance cover for such items and as such will re-charge any costs associated with increased insurance costs to you.

14. COLLECTION OF MATERIALS

14.1 On completion of the job, you agree to arrange for collection of all materials provided by you within thirty (30) days of completion of the job unless agreed otherwise and subject to clause 18 below.

14.2 If these are not collected within thirty (30) days or within the agreed time period, we reserve the right to destroy them by giving you not less than fourteen (14) days prior notice.

15. RESTRICTIONS

15.1 You undertake that you will not during the period commencing on the date of this agreement and terminating twelve (12) months from delivery of the Product, entice, solicit or engage any person who was an employee or a consultant or otherwise engaged by us during such period and whilst we both consider this restriction to be reasonable we agree that if a court of competent jurisdiction considers that the restriction is invalid but would have been valid if either the period or its scope were reduced then the restriction shall continue to apply but with such restriction(s) necessary to enable its validity.

16. DATA PROTECTION ACT

16.1 You undertake that you will not collect any data from or via the Product without obtaining the appropriate registration under the Data Protection Act 1984 and comply with your obligations under the Data Protection Act.

17. INDEMNITY

17.1 You undertake to fully indemnify us against all liabilities, claims, demands, actions, costs, damages and losses arising out of any breach by you of any of the terms hereunder. In the event of any claim, dispute, action, writ or summons against you, you agree to provide full details to us at the earliest opportunity and shall not settle any such matter without first consulting us.

18. -NULL-

19. TERMINATION

19.1 If at any stage you decide to terminate a contract with the Company you shall in any event be liable to pay us the cancellation fee equal to 90% of the Budget, together with all sums due under this agreement prior to the cancellation.

19.2 In addition to any other rights and remedies at law, either party may by written notice to the other party terminate this Agreement with immediate effect in the following circumstances:

19.2.1 where the other party has committed any serious breach of its obligations under this agreement and (if the breach is capable of remedy) has failed to remedy such breach within fourteen (14) working days of receipt of a notice specifying the breach and requiring remedy; or

19.2.2 where the other party goes into voluntary or involuntary liquidation or is declared insolvent either in bankruptcy proceedings or other legal proceedings or has reached an agreement with creditors due to its failure or inability to pay its debts as they fall due, or where a receiver is appointed over the whole or part of its business;

19.3 Without prejudice to sub-clause 19.1 of this clause and notwithstanding the termination of this agreement for whatever reason, you shall remain liable to pay us all sums due on or prior to the date of termination and all provisions of this agreement expressed to remain in effect after termination shall remain in full force and effect.

20. LIMITATION OF LIABILITY AND FORCE MAJEURE

20.1 Subject to sub clauses below, our liability for any loss or damage consequential or otherwise and howsoever caused whether in tort (to include without limitation for negligence) or contract or otherwise shall not exceed the amount invoiced by us to you in respect of the agreement.

20.2 We accept no responsibility for and bear no liability for any viruses in the Product discovered subsequent to delivery of the Product to you and acceptance by you.

20.3 If either party is effected by any circumstances beyond the reasonable control of that party ("Force Majeure") it shall forthwith notify the other party of nature and extent thereof. Neither party shall be liable to the other for the delay in performance, or non-performance of any of its obligations under this agreement when due to any Force Majeure of which it has notified the other party and the time for performance of that obligation shall be extended accordingly.

20.4 The Company shall not be liable for any loss or damage to any property of the Client while held at the Company's premises, including (without limitation) any rushes and any kind of footage, whether supplied on hard drive, film or tape, howsoever arising, unless caused by the negligence or breach of duty of the Company or its employees, agents or sub-contractors in which event the provisions of paragraph 20.10 below will apply.

20.5 All implied conditions and warranties, statutory or otherwise are hereby excluded.

20.6 The Company shall not be liable under any circumstances for any loss of profit or other consequential loss suffered by the Client arising from work undertaken by the Company.

20.7 The Client shall at times be liable to the Company and to those claiming through the Company for: –

20.7.1 Any injury to or death of any of the Company's employees; and

20.7.2 Any loss, damage or personal injury of any kind suffered by any third party, where such loss, damage or injury is occasioned by or arises out of any act or omission of the Company or its employees agents or sub-contractors as a result of carrying out the instructions of the Client, whether or not such injury, death, loss or damage arises as a result of any negligence on the part of the Company or its employees, agents or sub-contractors.

20.8 The Client shall indemnify the Company against all claims, proceedings, actions and costs in respect of such loss, damage or injury howsoever occasioned at any location whatever.

20.9 If the Company is unable to provide any of the services, facilities or goods agreed to be provided by the Company to the Client due to circumstances beyond its control (including but not limited to industrial action by any person or persons whether or not employees of the Company) the Company shall not be liable for any loss suffered or any sum payable by the Client as a result thereof. In the event of a breakdown or stoppage or defective working of any equipment hired to the Client or used as part of the services provided to the Client then the Company will use its reasonable endeavours to remedy the same without delay. In respect of any period during which the Client is thereby prevented from making use of the facilities or services supplied to him the Client shall be entitled to a proportionate remission of the charges payable in respect of such facilities or, at the option of the Company, shall supply the equipment, without additional charge, for a period of time equivalent to that during that which the Client shall have been prevented from using the equipment. Save as aforesaid the Company shall be under no liability whatever in respect of such breakdown or stoppage or defective working or other failures to perform its obligations.

20.10 No employee of the Company is entitled to make representations on behalf of the Company and the Client shall be entitled to rely only on representations made in writing by a director of a Company on its behalf.

20.11 In the event of any loss or damage to any property of the Client being occasioned by the negligence or breach of the duty of the Company, its employees, agents or subcontractors the liability of the Company under this Agreement or in law shall be limited to the Post Fee in aggregate.

21. RETENTION OF TITLE

21.1 The Company shall retain title to and legal and beneficial ownership of any film, videotape, hard drives, data and/or computer programme and/or other deliverables produced by it or used by it until all fees relating to the Company have been paid in full. The Company reserves the right to demand payment in full when any such film, video tape, hard drives, data or computer programme is removed from the premises.

22. GENERAL

22.1 Neither party shall assign the benefit or burden of this Agreement without the prior written consent of the other party.

22.2 No waiver, variation or amendment of this Agreement shall be valid unless made in writing and signed by both parties.

22.3 Nothing in this Agreement shall be deemed to constitute a partnership between the parties and neither of the parties shall do or suffer to be done anything whereby it may be represented as a partner of the other party.

22.4 You shall execute such deeds and documents and take such steps as may be required to confirm to us any rights granted to us hereunder.

22.5 The UK shall be the place of first publication of any material on the Internet.

22.6 Notices will be deemed to have been served (if delivered by hand) upon delivery or (if sent by first class post) two (2) days after being so sent or (if transmitted by facsimile or by electronic mail) when dispatched.

22.7 Either party may notify a change of address, facsimile or electronic mail to the other party, such notification to be effective five (5) business days after the notification is given.

22.8 The Client shall observe the provisions and requirements of all applicable trade union agreements and shall indemnify the Company against any costs, expenses and/or loss incurred by it as a result of any failure by the Client to do so.

22.9 Headings used in this Agreement are purely for ease of reference and do not form any part of or affect the interpretation of this agreement.

22.10 If any provision of this Agreement shall be adjudicated by a court to void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity or enforceability of this agreement, and the other provisions of this Agreement shall remain valid and binding between the parties.

22.11 This agreement contains the entire agreement between the Company and the Client with respect to its subject matter and supersedes all previous agreements and understandings between the Company and the Client, and it may not be modified except by another instrument in writing duly signed by the authorised representatives of both parties.

22.12 The parties agree and confirm that it is not their intention that any third party be entitled to enforce any term of this agreement which may confer a benefit upon that third party, whether such entitlement would, but for this Clause 12(e), arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

23. LAW

23.1 This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English Court.