

## General Terms and Conditions of Business for Production of Promotional Films

These terms and conditions apply to the production of TV commercials, cinema commercials, animation commercials and other moving picture material, regardless of how it has been produced and by means of which technical method said material is presented, distributed, broadcast, downloadable or is otherwise made available to the public.

### 1 Scope of the contract

The contract includes the production of moving picture material (hereinafter "Spot").

### 2 Production procedure and responsibility

- 2.1 The Spot shall be produced according to the script/storyboard/layout film provided, as well as the minutes of the Pre-Production Meeting ("PPM") and the instructions of the Principal.
- 2.2 The Principal is responsible for decisions concerning the content, as well the artistic and technical form. The Principal is also responsible for the factual accuracy of the Spot insofar as its instructions have been followed. Instructions from the Principal are to be considered instructions from the Principal. If the Supplier wishes to depart from the script, storyboard or instructions, for whatever reason, it must obtain the previous written consent of the Principal. The same applies if uncertainties arise on the part of the Supplier about the faithful implementation of requirements.
- 2.3 The Supplier is itself responsible for the creation of the Spot and for producing and delivering it in a quality that at least corresponds to the standards of filmography of its company as exemplified by its sample reel.
- 2.4 The Supplier shall, by agreement with the Principal, work out a precise time schedule regarding the individual production phases of the commercial and shall advise the Principal of the respective status of the production of the commercial in such a timely manner that the latter can influence every production phase.
- 2.5 The Principal, and/or the Principal's Agency respectively, shall have the right to be present during production of the commercial in order to give appropriate instructions if necessary. The Supplier shall take into account change requests of the Principal. If this gives rise to negligible additional cost (at least 2% of the net production price), said additional cost shall be borne by the Principal if the Supplier advised of the occurrence of said additional cost and the amount thereof in a timely manner prior to implementing the measures and the Principal approved said additional cost. If the Principal's change requests reduce the production cost, the amount thereby saved shall be for the Principal's benefit.
- 2.6 Cinema Spots shall be filmed using the normal/wide screen or 16/9 or other European norms according to specifications of the Principal as well as directives of the FSK (German voluntary film rating Principal), television Spots according to the television overlay. Television copies shall comply with the norms of ARD's 12/8 specification document.

### 3 Length of the Spot, FSK, disclosure of names

- 3.1 The agreed length of the commercial must be complied with precisely. In the case of cinema commercials, the length of films endorsed by the Spitzenorganisation der Filmwirtschaft e.V. [*Translator's note: The film industry's umbrella organisation*] (hereinafter referred to as "FSK") shall apply.
- 3.2 Unless otherwise provided in an individual agreement and if so desired by the Principal the Supplier shall submit the commercial to the FSK in a timely manner at its cost. If the FSK or the television advertising company complain about the commercial or individual titles because of elements that go back to an express wish of the Principal, any necessary changes shall be at the expense of the Principal, otherwise at the expense of the Supplier.
- 3.3 The Supplier shall not disclose its name or that of its company or of third parties, or display any characteristic sign of its company in the Spot or make it otherwise visible.

### 4 Products to be presented

- 4.1 The products to be promoted and presented in the Spot shall be made available to the Supplier in original at no cost. They shall be returned on completion of production.
- 4.2 If the originals are not suitable for filming, the Supplier shall immediately notify the Principal thereof and give the latter an opportunity to prepare them for filming. The Supplier is not entitled to substitute the original products made available with other products.

### 5 Periods and dates

- 5.1 The set delivery dates and or delivery deadlines are binding (transactions for delivery by a fixed date ("*Fixgeschäft*") in accordance with Paragraph 323(2) no. 2 German Civil Code ("*BGB*"), Paragraph 376 German Commercial Code ("*HGB*").
- 5.2 The term of periods is inhibited, if after issue of the contract wishes for changes by the Principal cause a considerable rearrangement of the delivery schedule. The Supplier shall immediately notify the Principal thereof.
- 5.3 If the Supplier realises that it cannot deliver on time it must promptly advise the Principal of the reason for and the expected duration of the delay. The Principal's rights because of late performance ("*Verzug*") on the part of the Supplier are not thereby affected.
- 5.4 If the Supplier is late with a part performance the Principal can rescind the contract or demand damages because of non-performance of the entire contract even if he has an interest in the part performance or if the breach of duty is negligible.

## **6 Acceptance of Performance, Defects**

- 6.1 The Supplier shall show the Spot in an unedited version before the Principal and/or the Principal Agency at a date that has been previously been agreed. The Principal shall immediately notify the Supplier of any desired changes.
- 6.2 The required final acceptance of the Spots (online release) shall take place in the presence of the Principal or the Agency and if desired by the Principal, in the present of the authorized party (director) after previous agreement. Official acceptance shall take place at the registered office of the Principal or at the office of the Agency or at the office of the Supplier.
- 6.3 Official acceptance includes the artistic, technical, commercial form of the Spot as well as questions of taste as well as issues of agreement with the script/storyboard/Layout film, the specifications of the PPM and additional instructions by the Principal as well as to sound and technical design. For the rest, the provisions of the contract for services law of the German Civil Code (BGB) shall apply.
- 6.4 If the Spot is not acceptable, the Supplier shall effect the improvements required by the Principal within a reasonable period.
- 6.5 If the Supplier is in arrears with the improvement, or if the new version does not show the improvement desired by the Principal, then the Principal can have the Spot improved or reproduced at the expense of the Supplier by a third party without setting of a further period of grace. The Supplier is obliged to immediately surrender all previously produced material. Other claims of the Principal, especially for damages due to deadlines being exceeded in consequence of time required for rectification of faults, are reserved.
- 6.6 The provisions of Paragraphs 377 nos. 1-3 German Commercial Code ("*HGB*") (duty to inspect goods delivered and to report any complaints) shall not apply unless there is an openly noticeable defect.

## **7 Property and publication**

- 7.1 All source files that created in conjunction with the production of the Spot, HTML, and HTML implementations, Photoshop files, Flash sources and other files, picture and sound carriers and all accessories, equipment, decorations etc. acquired for the production become the sole property of the Principal from the their time of their creation, insofar as not otherwise expressly arranged in individual contracts. The transfer to the Principal is replaced by the Supplier holding these objects in safekeeping at no charge. Image/sound negatives as well as magnetic tapes shall be stored by the Supplier at its own expense in a processing facility or video / sound studio in the name of the Principal for a minimum period of three years from the date of official acceptance. The Supplier shall notify the Principal of the name and address of the place of storage. The Supplier shall notify the Principal at least half a year before the aforementioned three-year period about the pending expiry of the period to make possible a decision about any extension of the storage period. If the Supplier does not provide the above information within the foreseen period, the Supplier shall be obliged to arrange indefinite further storage at its own expense.
- 7.2 All the aforementioned objects shall be released by the Supplier shall on demand from the Principal at any time, also if required before the Spot is completed.

## **8 Rights of use protected by copyright and ancillary copyrights**

- 8.1 The Supplier shall guarantee that the Principal will be able to exclusively commercially exploit the Spot at any time, in any place and without restrictions in terms of content, and specifically to reproduce, distribute, perform it or use it for broadcasting, and in any conceivable manner, also if edited, abridged, in the form of excerpts, translated, dubbed and with all presently known and future reproduction processes and systems. This also includes the right to lease and usage in other works. The Supplier herewith discharges the Principal from all such claims from third parties.
- 8.2 The Supplier herewith transfers to the Principal all proprietary rights relating to the use, ancillary copyrights and other rights that have resulted or result in the realization of the project as well as any such rights that have been or are to be acquired. On signing of the contract, the rights attributable to the Supplier are transferred to the Principal. The Supplier is obliged to inform the Principal of the extent of these rights, upon request by the latter, by making available the respective individual contracts. Contracts with contributors and pertaining to the acquisition of rights of use over works of publishers, music publishers and authors shall be made available to the Principal on request in original or as a copy. In particular, the Supplier shall acquire the following exclusive rights without restrictions in time or place and transfer these to the Principal:
  - 8.2.1 The transmission right, i.e. the right to make the Spot available to the public via internet, broadcasting, e.g. radio or television broadcasting, wire transmission (radio waves, laser, microwaves etc.) or similar technical installations in whole or in part. This applies for an unlimited number of transmissions, for all possible transmission channels (e.g. terrestrial channels, cable TV including cable retransmission and satellite TV including direct satellite broadcasts) and regardless of the legal form under which the respective broadcasting organization operates (public and private, commercial or non-commercial TV) and regardless of whether the legal relationship to the recipient of the transmission is defined (with payment or without payment of a fee, pay-TV, free-TV, pay per view, TV on demand etc.). The right of public relay of broadcast transmissions, as well as the right to make the Spot available to a restricted circle of viewers (e.g. hotels, hospitals, schools etc.) is also included.
  - 8.2.2 The right of performance, i.e. the right to make the Spot viewable by technical installations, regardless of the technical form of the performance system and the image/sound medium. The performance right relates in particular to all standard and substandard formats (also 70, 35, 16, 8 mm, EVR films), as well as electromagnetic (video) and digital systems and includes commercial and non-commercial film presentations. The right is also included to publicly present the Spot at trade fairs, commercial exhibitions, festivals, competitions and similar events.
  - 8.2.3 The video recording right, i.e. the right to reproduce and distribute (sale and lease, for loan etc.) of the Spot on image/sound media of all kinds (videograms) for the purpose of public and non-public

performance. This right extends to all audiovisual system and all analogue and digital storage media, regardless of the technical form of the individual system, especially video cassettes, video tapes, video discs of all kinds and similar technical devices (in particular CDV, CD-I, CD-ROM, CR-R, DVD, Holo-Disc, CD-recordable, EBG, CD-DA, DCC Laserdisc etc.). Also included is the transfer of the film to external data media, as well as the interactive use of the systems listed above (especially video on demand). Also substandard film rights are included, i.e. the right to reproduce and distribute substandard film or substandard film cassettes both for public and non-public performance. The reproduction of the above image/sound media can in particular also take place with a television screen or projection screen in the context of so-called closed-circuit video (e.g. in hotels, aircraft, on board ships etc.).

- 8.2.4** The interactive rights, i.e. the right to make interactive use of the Spot, in particular by means of individual editing, abridgment, alienation, reforming and/or other changes to the Spot or its individual image and/or sound components (possibly in conjunction with other works), as well as the right to export the Spot to databases and documentation systems or repositories of similar kinds, as well as to store it, archive it and make it available in electronic or similar ways and to transmit via non-physical dissemination, especially electronic transmission paths (e.g. Compuserve; AOL; T-Online or other so-called online services; multi-channel services; public data networks in the internet) via telecommunication installations, digital program providers or otherwise in digitally encoded form upon request (e.g. video on demand) to the requesting parties (e.g. private consumers, dealers, transmitters) for the purposes of acoustic and/or audiovisual consumption, relaying and/or reproduction (including the rights to streaming and downloading), and – insofar as necessary – to rearrange it for this purpose.
- 8.2.5** The right to reproduction and distribution, i.e. the right to reproduce and distribute the Spot in any manner in the context of the conferred usage types – also via image / sound media other than those originally used – (including leasing and loans), as well as the right to reproduce and distribute film stills in the context of publications in the print media.
- 8.2.6** The editing and dubbing rights, i.e. the right to abridge or divide the Spot, to combine it with other works, to retitle it, to change the music or to edit the production in any other way, as well as the exclusive right to dub the production in other languages, to redub it, to dub it retrospectively, to produce subtitled versions or versions with voice-overs and to commercially exploit the versions so edited according to the rights of use granted under this contract – whereby the personal copyrights shall be respected.
- 8.2.7** The sound media rights, i.e. the right to produce, reproduce and distribute records, cassette tapes and other sound media (especially CD, DAT etc.) created from the production soundtrack or summarization, rearrangement or other editing of the film contents as well as the right to transmit such sound carriers by broadcasting or to perform them in public.
- 8.2.8** The statutory payment claims for permission-free but commissionable uses by third parties such as lease bonuses, device and videocassette fees (§§ 27, 46, 47 II, 52 and 54 UrhG – German Copyright Act) and earnings from the authorization of retransmission by cable of the production.
- 8.3** The Supplier guarantees that the right to film the script/storyboard insofar as this has not been made available by the Principal and its arrangement in terms of image, word and sound belongs to the Principal. The same applies for all rights of the scriptwriters, the film makers and the performing and appearing artists and models involved (e.g. actors, cameramen, animation artists, directors, film architects, composers, musicians, narrators etc.) as per the above Para. 8.2. and sub-clauses. The Supplier discharges the Principal from all claims that third parties make due to infringement of any copyrights, copyright-related rights of use or ancillary copyrights. The Supplier will support the Principal in the judicial and extra-judicial assertion or defence of the rights obtained to the best of its ability, in particular provide information and the necessary documents, as well as do everything else that is required so that the Principal can assert the rights named in this Clause.
- 8.4** The Principal is entitled to transfer its rights from this contract in whole or in part to third parties; however it shall remain jointly and severally liable for the fulfilment of the arrangements made here along with respect to the third party.
- 8.5** The Principal is entitled to commission a photographer of its choice to take still photos during filming and use these in the scope of the rights conferred under this contract.
- 8.6.** The Supplier waives its right to be named and shall ensure that all playing and performing artists and models also waive said right.

## **9 Guarantee**

- 9.1** The Supplier guarantees the rights to be transferred and ensures that these rights have not been assigned to third parties (e.g. banks) or have not been encumbered with the rights of third parties (e.g. liens, pledges) and that third parties have not been engaged to exercise these rights.
- 9.2** The Supplier also ensures that no other obligations exist in relation to the fulfilment of this contract that could prevent the services to be rendered from being performed.
- 9.3** The Supplier shall guarantee that all persons to be appointed by it who shall participate in the creation and processing of the production that is the subject of this contract and who are entitled to copyrights, ancillary copyrights and proprietary rights have signed all the necessary declarations so that the Spot can be commercially exploited in the contractually-agreed scope.
- 9.4** On request by the Principal, the Supplier shall arrange the subsequent acquisition of extended rights, especially beyond the agreed term of use and/in other media.
- 9.5** The Supplier guarantees, that regarding all persons he provides, which are involved into the production and development of the Spot, a orderly payment of taxes and social insurance contributions is executed.

## **10 Prices and method of payment**

- 10.1 Insofar as not otherwise expressly agreed in writing, all costs for the transfer of the rights regulated here, as well as for the production of the Spot and any subsequent improvements are covered by the agreed price, including
- 10.1.1 Expenses for travel by the director and production manager to pre-production meetings at the Principal;
- 10.1.2 Expenses for trips of the director to acceptances of the films after agreement with the Principal or the Principal;
- 10.1.3 All costs for customer and Principal invoice copies (sending in robust packing by express rail parcels or air mail to the destination specified by the Principal);
- 10.1.4 Costs for decorations, accessories and fittings that have been produced or acquired in conjunction with the performance of the contract as well as their return delivery;
- 10.1.5 All cost for raw versions and rushes accruing in connection with the performance of the order.
- 10.1.6 All incidental costs (e.g. freight, packaging, postage, customs, taxes, duties, etc.).
- 10.2 The price will be paid after delivery of the Spot and copies of invoices to the Principal and after completion of official handover.
- 10.3 Additional copies shall be paid for after delivery and after an acceptance test.

## **11 Non-disclosure**

- 11.1 All messages, information and documents that the Supplier receives in conjunction with the contract are to be treated as strictly confidential. The Supplier shall also place its employees and colleagues under obligation to maintain confidentiality as well as any third parties engaged to fulfil the contract. In the event of any breach of the obligation to maintain secrecy the Supplier shall pay the Principal a contract penalty in the amount of 25% of the fees paid to date, but at least € 25,000, for every case of breach. This shall be without prejudice to any claims for damages.
- 11.2 The Contract may not issue press releases nor give press interviews without the previous express and written agreement of the Principal. The same applies for press photos or other reports about the Spot.
- 11.3 Copies, parts or excerpts of the Spot (including material produced for the commercial but not used in the final version) may not be produced, distributed, performed or given into the care of third parties without the express and written agreement of the Principal either in picture or sound form for its own purposes or those of third parties. This does not apply if the Supplier performs the Spot within a sample reel, provided that the performance takes place after the first national performance of the Spot in the public media.

## **12 Insurance**

- 12.1 The Supplier is obliged to take out reasonable insurance cover on the production risks and, upon request from the Principal, to present the corresponding insurance policies to the latter. The insurance policies to be taken out and the risks to be insured include in particular:
- 12.1.1 A production downtime insurance policy up to the final conclusion of the filming, if agreed in the individual contract;
- 12.1.2 A film negative insurance policy up until the material (film negative) has been delivered and formally accepted in full;
- 12.1.3 Material and personal liability for the objects used for the film production (products to be acquired, accessories, buildings, decorations, equipment etc.) as well as all persons involved in the film production (in particular director, artists, production staff, assistants and other persons present during the production of the Spot, programmers);
- 12.1.4 Unavailability of an artist commissioned by the Supplier.
- 12.2 The Supplier shall ensure that the Principal is named as the sole beneficiary of the loss of production insurance policy to be taken out by the former. The same applies for insurance of the film negative. If this is not possible in individual cases, the Supplier herewith waives its claims for payment of the insurance benefits from the insurance contract to the Principal; the latter accepts this waiver.

## **13 Insolvency of the Supplier**

Insofar as the Supplier becomes insolvent, or an application is filed for the institution of insolvency proceedings regarding its assets, the Principal shall be entitled to terminate this contract for good cause with immediate effect. The same applies in the event that the Supplier's claim against the Principal for payment of the production price is seized, and the Supplier does not bring about the rescission of the enforcement proceedings within a statutory period specified by the Principal.

## **14 Limitation Period. Set-Off. Assignment. Right of Retention**

- 14.1 Claims by the Supplier against the Principal shall be subject to a limitation period of 12 months.
- 14.2 Claims may be offset against claims of the Principal only if the Supplier's claims are uncontested or have become res judicata.
- 14.3 The Supplier's rights arising out of the order, particularly claims to remuneration, may not be assigned.
- 14.4 The Supplier can only assert for his rights of retention, particularly in regard of the Principals claim for restitution, if his claim has become res judicata. In the case of a dispute of the Parties concerning the interpretation and carrying out of the contract as well as the application of the music by the Principal, the Supplier waives measures of preliminary injunction.

## **15 Subcontracts**

- 15.1** If the Principal places the order in a third party's name and for a third party's account, the Principal shall not be liable for performance of the third party's contractual obligation, nor shall it be liable for said third party's credit worthiness, which it has not checked.
- 15.2** If the Principal places the order in its own name but on behalf of a third party, the remuneration shall not be due and payable by the Principal until the Principal has in turn been provided with appropriate funds by the third party for the purposes of satisfying the claims. The Principal shall not be obliged to in turn pay amounts owed if and so long as the third party has not paid said amounts to the Principal. This shall apply irrespective of the reason why payment has not been made to the Principal (including the third party's insolvency). Any contrary provisions of the Supplier in invoices, business papers or price lists as well as all changes, which the Supplier makes to this form, are void.

## **16 Miscellaneous**

- 16.1** Any derogating or supplementary provisions in individual contracts and regarding these General Terms and Conditions of Business or the order placed shall require written form in order to be valid and shall only apply to the respective order. This also applies to any agreement to derogate from the clause requiring writing. There are no verbal side agreements. In the event that one of the provisions of these General Terms and Conditions of Business or of the order is or becomes void, this shall not affect the validity of the remainder of the General Terms and Conditions of Business or of the order. The ineffective or impracticable provision shall be replaced by such valid and practicable provision, the effects of which come closest to the economic objective which the contract parties intended by the ineffective or impracticable provision. The same shall apply in the event of a lacuna in the provisions.
- 16.2** The place of jurisdiction and place of performance shall be the Principal's registered office (seat) unless some other place has been mandatorily prescribed by statute. German law shall apply.
- 16.3** Insofar as there is a requirement of written form under these General Terms and Conditions, said form shall also be fulfilled by facsimile.

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