

General Terms and Conditions of Business for the Production of Music for Promotional Films

- 1 The Placing of Orders**
Orders shall only be binding if placed in writing.
- 2 Order Volume**
The order for producing music for advertising films only applies to the production of music and its appertaining production processes.
- 3 Production procedure and responsibility**
 - 3.1** The music is to be produced in accordance with the briefing provided by the Principal.
 - 3.2** The Principal is entitled to take decisions regarding the content and artistic/technical design. Instructions issued by the Agency are deemed instructions issued by the Principal. If the Supplier intends to vary from the briefing or instructions, irrespective of whichever reason, it is to obtain prior written approval by the Principal. The same applies in the event that the Supplier is uncertain about the faithful implementation of the requirements.
 - 3.3** The Supplier is to compose the music itself, and produce and supply it in a quality that at least corresponds with the status of production technology of its enterprise proven by way of its sample roll.
 - 3.4** The Principal is entitled to be present during the production in person or by way of representation by the Agency to issue instructions where necessary. The Supplier shall take the Principal's requests for change into consideration. If this gives rise to significant additional costs, such costs shall be borne by the Principal if the Supplier provides notification of the occurrence of such additional costs and the amount in good time prior to implementation of the measures, and the Principal authorises such measures.
- 4 Length of music, FSK, stating names**
 - 4.1** The agreed length of music is to be adhered to precisely.
 - 4.2** If the music is to be performed in cinemas, the Supplier shall submit the music to the Spitzenorganisation der Filmwirtschaft e.V. [*Translator's note: The film industry's umbrella organisation*] (hereinafter referred to as "FSK") at its own cost. If FSK or the advertising television company objects to the music or individual titles on the basis of elements that are attributable to an express wish of the Principal, the cost of the necessary changes shall be borne by the Principal, otherwise these shall be borne by the Supplier.
- 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 duration of the periods shall be suspended if, once the order has been placed, requests for change put forward by the Principal necessitate considerable rearranging of the schedules. The Supplier shall inform the Principal of this without delay.
- 6 Acceptance, defects**
 - 6.1** The necessary final acceptance of the music is to take place in the presence of the Principal or the Agency, and in the presence of the Supplier or an authorised agent following prior agreement on the date. The acceptance is to be carried out at the Principal's discretion at its registered office or at the Agency's registered office.
 - 6.2** The acceptance comprises the design in terms of artistic quality, technical features, advertising effect and taste, and correspondence with the briefing and the Principal's additional instructions. In all other respects the provisions of the German Civil Code ("*BGB*") governing contracts for work and services ("*Werkverträge*") shall apply.
 - 6.3** Insofar as the music is not capable of being accepted, the Supplier shall, at the Principal's request, subsequently improve the music within an additional period of reasonable length. The Principal shall have the right to choose between subsequent repair and subsequent delivery.
 - 6.4** If the Supplier defaults in subsequently improving the music, or if the subsequent improvement does not bring about the success requested by the Principal, the Principal may, without setting additional periods, make arrangements for the subsequent improvement or new production by a third party at the Supplier's cost. The Supplier undertakes to surrender without delay the material that has already been produced. This shall not affect other claims on the part of the Principal, in particular for compensatory damages regarding schedule overruns as a result of the rectification of defects.
 - 6.5** 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 surrender**
 - 7.1** In the absence of agreements to the contrary, all picture and sound carriers associated with the production of the music shall be deemed the Principal's sole property as from the time at which they are created. The surrender to the Principal shall be replaced by the fact that the Supplier gratuitously stores such items for the Principal, or places them in a processing facility or recording studio in the Agency's name. Costs in this respect shall be borne by the Principal.
 - 7.2** All the above-mentioned items shall be surrendered by the Supplier at the Principal's request at any time, where applicable including prior to completion of the music.
- 8 Copyright utilisation rights and ancillary copyrights**

- 8.1** The Supplier is to ensure that the Principal can utilise the music exclusively and in terms of time, place and content without restrictions and without obtaining additional authorisation from the parties involved in the musical composition, in particular duplicate, disseminate, demonstrate or use it for radio programmes in any conceivable manner including in an amended, shortened or translated form, and in excerpts, by way of all the currently known and future reproduction procedures and systems, including the internet. This includes leasing and utilisation rights in other works. The Supplier hereby renders the Principal exempt from all such third-party claims.
- 8.2** The Supplier hereby assigns to the Principal all copyright utilisation rights, ancillary rights and other rights in conjunction with the realisation of the project that apply to, or shall apply, to the Supplier or such rights that the Supplier has acquired or shall acquire, at the time at which such rights occur. Rights held by the Supplier at the time at which the contract is entered into shall be assigned to the Principal upon entering into the contract. The Supplier undertakes, at the Principal's request, to disclose in detail the scope of these rights by way of presenting the appropriate contracts. On request, the Supplier is to surrender to the Principal the original versions or copies of contracts entered into with contributors and contracts on the acquisition of utilisation rights of publishing houses, music publishing houses and authors. The Supplier is, in particular, required to acquire the following exclusive rights that are not restricted in terms of time or geography, and assign these to the Principal:
- 8.2.1** Broadcasting right, i.e. the right to make the music available to the general public wholly or in part via the internet or radio in the form of sound and television, mobile radio (Hertz waves, lasers, microwaves etc.) or similar technical devices. This applies to any number of broadcasts for all possible broadcasting procedures (e.g. terrestrial broadcasts, cable television by way of inclusion of cable forward transmission and satellite television by way of inclusion of direct satellites) and irrespective of the legal form of the respective broadcasting company (public and private, commercial or non-commercial television) and irrespective of the legal relationship with the recipient of the programme (with or without payment of remuneration, Pay-TV, Free-TV, Pay per View, TV on Demand etc.). This includes the right to public broadcast of radio programmes and the right to make the music available in a limited group of recipients (e.g. hotels, hospitals and schools etc.).
- 8.2.2** Demonstration right, i.e. the right to render the music perceivable by way of technical devices irrespective of the technical design of the demonstration system and the picture/sound carrier. The demonstration right refers, in particular, to all film and narrow film formats (including 70, 35, 16 and 8mm, EVR films) and electromagnetic (video) and digital systems, and comprises commercial and non-commercial film demonstrations. It includes the right to render the music publicly perceivable at fairs, trade shows, festivals and similar events.
- 8.2.3** Videogram right, i.e. the right to duplicate and disseminate (sell and lease, loan etc.) the music on any kind of picture/sound carriers (videograms) for the purpose of public and non-public reproduction. This right includes all audiovisual systems and all analogue and digital storage media irrespective of the technical design of the individual system, in particular video cassettes, video tapes, all kinds of video disks and similar technical devices (in particular CDV, CD-I, CD-ROM, CR-R, DVD, Holo-Disk, CD-Recordable, EBG, CD-DA, DCC Laserdisc etc.). This includes transferring the film/music to external data carriers, and interactive use of the above-mentioned systems (in particular Video on Demand). This also includes narrow film rights, i.e. the right to duplicate and disseminate narrow films or narrow film cassettes for the purpose of public and non-public broadcast. The broadcast of the above-mentioned picture/sound carriers may, in particular, occur in conjunction with a television set or other screens as part of the so-called Closed-Circuit Video (e.g. in hotels, airplanes and ships etc.).
- 8.2.4** Interactive right, i.e. the right to interactive use of the music, in particular individual processing, shortening, alteration, redesigning and/or other changes to the music, or its individual sound elements (where applicable in conjunction with other works), and the right to incorporate the music in databases and documentation systems or storage systems of a similar kind, to feed, store, archive and make available in electronic or a similar manner, and transmit by way of non-physical dissemination, in particular by way of electronic means of transmission (e.g. CompuServe; AOL; T-Online or other so-called online services; multi-channel services; open data networks in the internet) via telephone devices, digital program suppliers or otherwise in a digitally coded form on demand (e.g. Video on Demand) to the party/parties using such services (e.g. private consumers, dealers and broadcasters) for the purpose of acoustic and/or audio-visual perception, forwarding and/or duplication (including the rights to streaming and downloading) and – where applicable – to redesign.
- 8.2.5** Duplication and dissemination right, i.e. the right to duplicate and disseminate in any way the music as part of the granted types of utilisation rights – and in picture and sound carriers other than the original picture and sound carriers (including renting and loan).
- 8.2.6** Processing and synchronisation right, i.e. the right to shorten, divide and link the music with other works, specify a new title or otherwise process the music, and the exclusive right to produce the music, or by way of third parties, in other languages and utilise the versions produced in this manner in accordance with the utilisation rights granted in this contract.
- 8.2.7** Sound carrier right, i.e. the right to produce, duplicate, disseminate long-playing records, cassettes or other sound carriers (in particular CD and DAT etc.) that are designed by way of using the music or by way of subsequent reproduction, redesign or other processing of the musical content, and the right to broadcast such sound carriers via radio or publicly broadcast these.
- 8.2.8** The statutory remuneration claims for permission-free but use subject to remuneration by third-parties, e.g. hire royalties, equipment and video cassette charges (Sections 27, 46, 47 II, 52 and 54 of the German Copyright Act – UrhG) and the revenue from permitting cable forward transmission of the production.
- 8.3** The Supplier guarantees that the Principal is granted the right to utilise the music and its design in writing and sound. The same applies to all rights of the exercising and performing artists (composers, musicians and speakers etc.) in accordance with the above sub-section 8.2 including sub-paragraphs. The Supplier shall render the Principal exempt from all claims lodged by third-parties regarding the infringement upon any kind of copyrights, copyright utilisation rights or ancillary rights. The Supplier

shall, in accordance with its capabilities, support the Principal in the case of the court or out-of-court assertion or defence of the acquired rights, in particular provide information and supply the necessary documents, and undertake all measures required so that the Principal acquires the rights stated in this sub-section.

- 8.4 The Principal is entitled to assign in full or in part to third-parties its rights resulting from this contract, but shall, however, remain liable to the third party for honouring the agreements entered into here.

9 Guarantee

- 9.1 The Supplier guarantees the rights that are to be assigned here and assures that these rights have not been assigned to third parties (e.g. banks) or are not encumbered with third-party rights (e.g. rights of lien, security rights), and third parties have not been commissioned with exercising these rights.
- 9.2 The Supplier further assures that in relation to honouring this contract, no other obligations have been entered into that could have a detrimental effect on rendering these services.
- 9.3 The Supplier guarantees that all of the persons to be supplied by it and who are involved in the production and editing of the contractual production and who have copyrights, performers' rights, title rights or other rights, have given all of the necessary declarations of consent so that the music can be exploited in the contractually agreed scope.
- 9.4 Upon request by the Principal the Supplier shall arrange the subsequent acquisition of extended rights, particularly beyond the agreed term of use and/or in other media.
- 9.5 The Supplier guarantees that taxes and social security contributions have been paid over properly with regard to all of the persons to be provided by it who are involved in the production and editing of the contractual production.

10 Prices and method of payment

- 10.1 In the absence of express, written, agreements to the contrary, the agreed prices contain all costs in respect of transferring the rights provided for here and the production of the music and subsequent improvement that may apply, including:
- 10.1.1 The travelling costs of the composer and the producer in respect of meetings at the Agency;
- 10.1.2 The travelling costs of the composer to accept following coordination with the Principal or the Agency;
- 10.1.3 All material shipping costs (including customer and Agency document copies) in stable packaging per rail express or air freight free of charges to the destination places specified by the Principal;
- 10.1.4 All costs in respect of picture and sound carriers in conjunction with executing the order.
- 10.2 The price shall be paid following provision of the music and following a successful acceptance.
- 10.3 Copies shall be paid for following supply and acceptance.

11 Secrecy

- 11.1 Strict secrecy is to be maintained regarding all statements, information and documents received by the Supplier in conjunction with the order. The Supplier shall place its salaried employees and workers, and other third-parties upon whose services it calls to execute the order, under this obligation to maintain secrecy. 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 Supplier may neither issue press releases nor give press interviews without prior express and written approval by the Principal. The same applies to press photographs and other statements about the music.
- 11.3 The Supplier may not make, disseminate, demonstrate or surrender to third-parties copies, parts or excerpts of the music for its own or third-party use without express and written approval by the Principal. This shall not apply if the Supplier demonstrates the music within the sample roll insofar as the demonstration takes place following the first public, national, performance of the music.

12 Insurance policies

- 12.1 The Supplier undertakes to appropriately insure the production risks and at the Principal's request surrender the respective insurance policies to the Principal. The risks that are to be insured include, in particular:
- 12.1.1 Property and personal liability for the items used for the production, and all parties contributing to the production (in particular artists, production crew, assistants and other persons present during the production of the music);
- 12.1.2 Loss of an artist to be provided by the Supplier.
- 12.2 The Supplier shall ensure that the Principal is to be stated as the sole beneficiary of the production loss insurance policy to be taken out for the production of the music. If this is not possible in an individual case, the Supplier hereby assigns to the Principal its claims to payment of the insurance benefits resulting from the insurance contract. The Principal accepts such an assignment.

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 right 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 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 and 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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