

ANDREW SUMNER ASSOCIATES - TERMS & CONDITIONS

1. Definitions

1.1 In the Agreement unless the context requires otherwise:

- "Agreement"** means these Terms and the Purchase Order together with any other documents expressly incorporated by reference in the Purchase Order and/or Terms;
- "Client"** means any person, firm, company or organisation to whom the Company shall provide the Services in accordance with the Purchase Order;
- "Client Materials"** means all films, tapes, files, documents and other property owned by the Client in the Company's possession;
- "Company"** means Andrew Sumner & Associates Ltd, a company registered under company number 269 3536 and with the registered address of Suite 401, Barclay House, 35 Whitworth St West, Manchester. M1 5NG.
- "Confidential Information"** means the existence and terms of the Agreement and all confidential information (in any form or media, whether oral or written) acquired by a party (whether before or after the date of the Agreement and whether directly or indirectly) as a result of negotiating, entering into or performing the Agreement, which relates to the affairs or business of the other party or its services, products, operations or know-how;
- "Deliverables"** means the products of the Services provided by the Company (or its agents, subcontractors, consultants and employees), as specified in a Purchase Order;
- "Fees"** means the fees payable by the Client for the Services;
- "Intellectual Property"** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- "Rights"** means an order for Services submitted by the Client to the Company using the Client's authorised purchase order.
- "Purchase Order" "Services"** means the post-production services to be provided by the Company as set out in the Purchase Order; and
- "Terms"** means these terms and conditions of business.

Scope

- 1.2 The Agreement constitutes the entire understanding between us and supersedes any prior or other oral or written agreement or terms and conditions. It may only be varied by express agreement in writing signed by both of us. In the event of any inconsistency between the Purchase Order and these Terms, the Purchase Order shall prevail. For the avoidance of doubt, the acceptance by The Company of a Client's purchase order which contains different terms and conditions does not constitute acceptance of those terms and conditions.
- 1.3 Any requests by or terms or conditions introduced by the Client after receipt of the Purchase Order and/or the Terms that purport to cancel or vary any or all of the Agreement shall be ineffective and shall not be deemed to constitute a counter-offer.

The allocation of any work by the Client to the Company shall be deemed acceptance by the Client of the terms of the Agreement.

2. Orders and cancellation

- 2.1 No Purchase Order will be binding on the Company unless or until it has been accepted by the Company in writing, save that verbal orders may be accepted at The Company's discretion. Once accepted, a Purchase Order may not be cancelled other than with the Company's written consent.
- 2.2 In the event of any cancellation request being received in relation to a Purchase Order and permitted by the Company more than 7 days prior to the date the Services are due to commence, the Company shall, at its discretion, be entitled to payment of 50% of the Fees. Any cancellation received and permitted less than 7 days before the date the Services are due to commence shall, at the company's discretion, be charged in full.
- 2.3 In the event that a booking is rescheduled at the client's request ASA will endeavour to maintain continuity of room and operator, but this cannot be guaranteed. Priority will be given to bookings that have not been subject to delay or cancellation.
- 2.4 Unless expressly stated otherwise, a quotation is valid for 30 days only from the date of the quotation.

3. Provision of Services

- 3.1 Subject to the Client paying the Fees and otherwise performing its obligations in accordance with the Agreement, the Company shall provide the Services to the Client.
- 3.2 The Company shall use reasonable endeavours to provide the Services and to deliver the Deliverables to the Client in accordance in all material respects with the specification of the Services and Deliverables set out in the Purchase Order or as the Company and the Client shall subsequently agree in writing from time to time.

4. Client's obligations

- 4.1 The Client agrees to:
- (a) use its best endeavours to ensure that any materials or information the Company may

require for the proper provision of the Services are made available to the Company as and when the Company reasonably requires and to ensure that any such information is accurate in all material respects; and

(b) obtain all necessary authorities and consents in respect of all materials and information it supplies to the Company in connection with the Services.

- 4.2 The Client agrees to keep the Company informed of any new information or developments of which the Client becomes aware which might have a bearing on the Company's provision of the Services under the Agreement. The Company shall not be responsible for any inadequacy in Services provided by the Company as a result of the Client's failure to keep the Company adequately informed of new information or developments.
- 4.3 The Client agrees that the Company may rely on information provided by any employee or Director of the Client or anyone else with the ostensible authority to bind the Client.
- 4.4 If the Company's performance of its obligations under the Agreement is prevented, impeded or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from that act or omission.

5. Price and payment

- 5.1 In consideration of the provision of the Services the Client shall pay to the Company the Fees as set out in the quote supplied by the Company to the Client or such other rate as may be agreed in writing between the Company and the Client from time to time. The Fees are expressed exclusive of VAT, which shall be payable by the Client at the appropriate rate, and of any expenses incurred by the Company in connection with the performance of the Services which shall be payable by the Client in accordance with clause 6.2 below.
- 5.2 Whilst all the time and price estimates given by The Company are given in good faith, The Company will endeavour to adhere to such estimates. The Company will not be bound by such estimates where they are not met due to the client's changes or other circumstances outside The Company's control. The Company will not be liable for failure to meet such estimates. The Company will not be responsible for any costs, charges or expenses incurred by the client as a result of such failure.
- 5.3 In addition to the Fees the Company shall invoice the Client the following approved costs incurred by the Company in performing the Services:
- (a) Travelling and subsistence expenses reasonably incurred by the Company's personnel;
 - (b) Additional (to the quote) transfers, stock and other direct costs e.g. taxis, couriers
 - (c) Unless otherwise agreed, hours outside the quoted time will be charged pro rata
 - (d) Meals Ordered and not paid for at the time of ordering will be added to the final invoice – unless previously agreed otherwise.
 - (e) Any other item agreed between the parties in writing.
- 5.4 Overtime.
- (a) After 10pm any project specific staff costs incurred including transport home, hotel costs and evening meals (after 8pm) will be recharged to the production
 - (b) Weekends. The company generally operates on a standard 8 hours at weekends from

09001800 with a lunch break. Unless agreed otherwise, bookings operating outside these hours are subject to staff availability and to the following overtime rates for facilities and staff: 1800-0000-1.5x quoted rate. After midnight– 2x quoted rate.

5.5 The Client may ask the Company to allow the Client credit. The Company may decide at its absolute discretion whether to do so. The Client will provide such trade or bank references as the Company may reasonably require following a request for credit. If the Company has agreed to a credit arrangement, the Client shall pay the Fees in relation to which credit has been agreed in full within 30 days of the date of the invoice. Time shall be of the essence for invoice payments.

5.6 Payment

(a) If any sum payable by the Client shall not be paid by the due date for payment, the Client agrees to pay simple interest on all outstanding sums at the rate of 4% per annum above the base rate of Barclays Bank plc from the due date until the date of payment and such interest shall be payable on demand.

(b) The company may also withdraw any applicable discounts and charge full amounts in accordance with the current rate card.

(c) The Company shall also be entitled to vary any credit limit going forward

5.7 The Client shall have no right of set-off, deduction, withholding or counterclaim against the Company's invoices. If the Client is required by law to make any deduction or withholding from any payment to the Company under the Agreement or in respect of any tax, the Client will immediately notify the Company of such requirement and the sum payable by the Client in respect of which the deduction or withholding is required shall be increased to the extent necessary to ensure that, after the making of the deduction or withholding, the Company receives on the due date and retains (free from any liability in respect of the deduction or withholding) a net sum equal to that which it would have received and retained had no deduction or withholding been required or made.

5.8 Any query alleging a defect in the Services or relating to an invoice must be respectively raised in writing within 7 days of the Client becoming aware of the alleged defect or within 14 days of such invoice.

5.9 The Company shall be entitled to retain possession of any Deliverables until payment has been received in full from the Client.

5.10 Until the Company has received payment in full in cash or cleared funds for the provision of the Services:

(a) legal title to all Deliverables shall remain with the Company (notwithstanding delivery or the passing of risk to the Client); and

(b) the Company shall have a general lien over all Deliverables and Client Materials.

5.11 In the event of any monies remaining outstanding from the Client to the Company after the expiry of 14 days after such monies become due or if any step is taken by or against the Client pursuant to the Insolvency Act 1986:

(a) the Company shall be entitled to exploit or dispose of all Deliverables and Client Materials in its possession, retain the net proceeds of sale against such outstanding monies, and shall account to the Client for the balance (if any) remaining; and

(b) the Client shall forthwith upon demand deliver to the Company any Deliverables, ownership of which remains with the Company, and in any event the Company shall be entitled to repossess the same and for such purpose the Client grants to the Company an

irrevocable licence to enter into the premises of the Client, without being liable for any damage caused thereby.

6. Delivery

- 6.1 The Company shall use reasonable endeavours to meet any delivery dates specified in the Purchase Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. The Company shall not be liable for any loss or damages of any nature caused by any failure of the Company to meet any delivery date.
- 6.2 In all cases, delivery shall be at the Company's premises. Risk in the Deliverables shall pass to the Client on delivery.
- 6.3 At the Company's sole discretion, the Company may agree (at the Client's sole expense and risk) to pack and despatch Deliverables to any address specified by the Client.

7. Storage

The Company reserves the right to charge for storage of any Client Materials and/or Deliverables that it stores on behalf of the Client.

8. Intellectual Property

- 8.1 If and to the extent that Intellectual Property Rights exist in any Deliverables and are owned by the Company ("**Deliverables IPRs**") the Company assigns those Deliverables IPRs to the Client subject to and with effect from receipt by the Company of full payment of all sums invoiced to the Client in relation to those Deliverables and the related Services.
- 8.2 The Intellectual Property Rights in any materials owned by the Company prior to the date of any Purchase Order or developed independently by the Company of the Services (and all developments and modifications of such items) shall remain vested in the Company. The Company hereby grants to the Client a non-exclusive, royalty-free licence to use, perform, display, copy, sub-licence and distribute such Intellectual Property Rights only as part of the Deliverables.
- 8.3 The client hereby grants the company the limited right to exhibit the Client Materials, or excerpts thereof, on the Company's websites, in press releases, or in 'demo reels' for the limited purpose of demonstration of the Company's work in accordance with the standard industry practice.

9. Warranties and Liability

- 9.1 The Company warrants that it shall perform the Services with the reasonable skill and care to be expected of a post-production company of the Company's status and experience. To the fullest extent permitted by law, all other warranties, conditions, representations or terms other than those expressly set out in these Terms are hereby expressly excluded including, but not limited to, all implied and statutory conditions.
- 9.2 The Company shall not in any circumstance be liable for:
- (a) any loss of business, goodwill, reputation, contracts, opportunities or profits (in each case whether arising in the normal course of events or not and whether or not the Company knew of the possibility of such loss);
 - (b) any indirect, consequential or special loss or damage; or

(c) any loss of quality attributable to any process carries out during the performance of the Services.

- 9.3 The Client's particular attention is drawn to the fact that any prices quoted for the work undertaken by the Company do not take any account of any special value of any Client Materials passed to, or stored by, the Company. The Client acknowledges that the cost of insuring Client Materials against all risks to its full value (if such insurance could be obtained) would result in a substantial increase in the Company's prices for Services. Risk in the Client Materials shall at all times remain with the Client and the Client will insure all Client Materials passed to the Company against all risks to their full replacement value (including any consequential loss they may suffer as a result of loss or damage). The Company accepts no liability whatsoever for any loss or damage caused by the default or negligence of its servants, agent or sub-contractors save that the Company shall on request refund the current purchase cost of any blank film stock, video tapes or other physical media damaged or lost in its possession by reason of the Company's negligence or default.
- 9.4 The Company shall be entitled to destroy or dispose of any Client Materials not collected from the Company within six months after the completion of any Services and, until collected, such Client Materials shall be held by the Company at the Client's sole risk and liability.
- 9.5 Save as set out above, the Company's total liability for any and all loss or damage arising out of or in connection with the Agreement shall be limited the total sums paid by the Client to The Company under such an agreement.
- 9.6 Nothing in the Agreement shall be construed as excluding or limiting the Company's liability for death or personal injury caused by the Company's negligence or any liability which by law cannot be excluded or limited.
- 9.7 In the event Client requests access to its content via The Company's Preview Theatre system (the "Preview Theatre"): any information contained in the email notifying Client of such access to the Preview Theatre is proprietary and confidential information intended solely for the addressee(s) and is not to be disseminated, disclosed, forwarded or distributed to any other parties, publicly or privately. Acting on, accessing and/or receiving the content/material referenced therein constitutes Client's acceptance of these conditions and any liability arising from the unintentional or intentional misuse of the proprietary and confidential information or content via the Preview Theatre. If Client has received such email in error, or it is not the intended recipient, Client shall contact the sender immediately and delete the email.

10. Indemnity

The Client shall indemnify on demand the Company and its directors, employees, and subcontractors against each and any loss, liability, cost, action, award, charge, claim or expense brought, made or claimed against any one or more of the Company, its directors, its employees and its subcontractors by any third party for any reason arising out of or connected with the provision of the Services by the Company under the Agreement, including (without limitation) in respect of any infringement or alleged infringement of any Intellectual Property Rights or any defamation arising out of the processing or reproduction of the Client Materials by the Company.

11. Termination

11.1 Without prejudice to any other right or remedy which it may have, the Company shall be entitled to terminate the Agreement if:

(a) the Client is in material breach of an obligation under the Agreement, which breach, if capable of remedy, has not been remedied within 14 days after the Company has served written notice on the Client specifying the breach and the steps required to remedy it; or

(b) the Client is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or has a trustee, receiver or an administrative receiver appointed over it or over any substantial part of its assets or has an order made or passes a resolution for its liquidation, dissolution or winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation, takeover or reconstruction) or enters into any voluntary agreement with its creditors or becomes bankrupt or files for voluntary bankruptcy or ceases or threatens to cease to carry on business or any analogous situation to any of the above occurs under the law of any jurisdiction.

11.2 Any termination of the Agreement (howsoever occasioned) shall be without prejudice to a party's other rights and remedies and shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of the Agreement.

11.3 Upon termination of the Agreement for any reason whatsoever:

(a) the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and

(b) clauses 2, 6, 8, 9, 10, 11, 12, 13, 14, 17 and 18 shall remain in full force and effect notwithstanding such termination.

12. Confidential Information

12.1 The Company and the Client agree and shall procure that each of its officers, employees, representatives, advisers, agents, consultants or subcontractors agree to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information relating to the other's technology, all technical and commercial know-how, specifications, technical processes, business affairs, client lists, price lists, finances or any such information relating to or being the property of any client, customer, supplier or other party dealing with the other where knowledge or details of the information was received pursuant to the Agreement except that this restriction shall cease to apply to information or knowledge which has come into the public domain other than by breach of this clause 13 or where such disclosure is required by law.

12.2 Neither party shall use any Confidential Information of the other party for any purpose other than to perform its obligations under the Agreement.

12.3 Both parties shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses Confidential Information comply with this clause 14.

13. Non-Solicitation

13.1 The Client shall not either on its own account or in partnership or otherwise and whether directly or indirectly during the continuance of the Agreement (the "**Engagement Period**") or

for a period of 6 months from the date on which the Agreement terminates or expires solicit or entice away (or authorise the taking of any such action by any other person) any person who was during the Engagement Period a director or an employee of the Company who worked on the Services.

- 13.2 The Client acknowledges and agrees that the restriction set out in this clause 14 is fair and reasonable in the circumstances and that if any part of such restriction shall be rendered or judged invalid or unenforceable such part shall be deemed to be severed from the Agreement and such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining part.

14. Force majeure

- 14.1 The Company shall not be under any liability to the Client as a result of the Company being unable to perform any of its obligations due to circumstances beyond its reasonable control, including without limitation industrial action, act of god, fire, flood, storm, acts of civil or military authorities, war, terrorism, shortages of material or acts, omissions or failures of third parties or the Client. The Company shall at its sole option be entitled to either perform such obligations as and when it is reasonably able to do so or to treat itself as wholly or partly released from all such obligations without liability.

15. Assignment and Subcontracting

- 15.1 The Company may engage any person, firm or company as its subcontractors to perform any of its obligations under the Agreement.
- 15.2 The Agreement is personal to the Client who may not assign or transfer it without the prior written consent of the Company.

16. Notices

- 16.1 Any notice made pursuant to the Agreement shall be in writing and sent by first class post [or by email], to the address [or email address] for the relevant party set out in the Purchase Order or to such other address as may be notified to the other in writing from time to time.

- 16.2 Any such notice shall be deemed to have been given:

(a) if posted, on the second business day following the day on which it was sent by first class mail, postage prepaid;

(b) if sent by email, at the time of sending, provided that the sender does not receive any indication of non-delivery to the recipient.

A "business day" for the purposes of this clause 17, is a day which is not a Saturday, Sunday or Bank or public holiday in England and Wales.

17. General

- 17.1 Nothing in the Agreement shall be construed to create a partnership between the Company and the Client.
- 17.2 No delay by either party in enforcing the terms of the Agreement shall prejudice or restrict the rights of that party and nor shall any waiver of rights operate as a waiver of any subsequent breach.

- 17.3 Notwithstanding that the whole or any part of any provision of the Agreement may prove to be illegal or unenforceable the other provisions of the Agreement and the remainder of the provision in question shall remain in full force and effect.
- 17.4 The Agreement supersedes all prior agreements, arrangements and undertakings between the parties in relation to the subject matter of the Agreement.
- 17.5 The Company hereby excludes, to the fullest extent permitted by applicable law and save to the extent expressly provided for in the Agreement, any and all warranties, representations, undertakings, terms and conditions which would or may otherwise have been implied or incorporated into the Agreement by statute, common law or otherwise.
- 17.6 The *eiusdem generis* rule does not apply to the agreement, so that general words introduced by the word "other" will not be given a restrictive meaning because they are preceded by words indicating a particular class of acts, matters or things.
- 17.7 A person who is not a party to the Agreement shall not have any rights under or in connection with it.
- 17.8 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have [non-]exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter.
- 17.9 Licence to Occupy. Any occupation of The Company's premises by the Client will:
- (a) Not confer exclusive occupation on the Client who shall occupy as licensee only;
 - (b) Not create any relationship of Landlord and Tenant;
 - (c) Be personal to the client; and
 - (d) (unless otherwise agreed) be subject to the payment of a licence fee as imposed by The Company.