

## **GENERAL TERMS AND CONDITIONS**

for the members of the Swissfilm Association  
relating to the “Service Contract regarding the production of an audio-visual work”

Zürich, 1<sup>st</sup> August 2019

## 1. OBJECT OF THE CONTRACT

**1.1** These General Terms and Conditions ("GTC") form an integral part of the Service Contract regarding the production of an audio-visual work (commonly referred to as "contract production") between the party ordering the work (the "Customer") and the production company (the "Producer"). These GTC supplied by the Producer are applicable to all audio-visual works produced by the Producer for the Customer, even if no specific reference is made to this in each case.

**1.2** The document constituting the Service Contract consists of an individual contract and these General Terms and Conditions. The Service Contract shall be concluded by signing the individual contract entitled "Service Contract regarding the production of an audio-visual work", by accepting an offer and/or a price estimate, or by issuing any other type of confirmation/agreement. The offer made by the Producer is usually based on a written production briefing prepared by, or on behalf of, the Customer, which includes, the price of the work, a description of the work (possibly in the form of a story board), the agreed use (media, territory, duration) and any payments of rights included in the price of the work, the language/screen versions, format and audio-visual media, plus key production data and the delivery date as well as other requirements laid down by the Customer.

**1.3** In so far as the Customer is represented by an agency, the Customer and the agency shall be jointly and severally liable, unless the agency presents a full power of attorney of relevance to this Contract signed by the Customer or unless the Customer has signed the Service Contract in his own name in a legally effective way.

**1.4** The Producer is required to maintain secrecy and exercise due diligence in respect of all documentation, information and objects accessed or placed at his disposal in connection with the production.

### 1.5 Definitions:

**a)** "First day of shooting": an audio-visual work is created by producing sound and image data by means of a variety of technical processes, such as film recordings, animation, etc. The term "first day of shooting" shall hereinafter be understood to refer to the day on which the production of the image data intended for the Work commences.

**b)** "Commercial": the term "commercial" shall be understood to refer to a work that is displayed in the media (TV, cinema, POS, sponsoring, billboards, e-boards, social media, paid posts, internet banners, etc.) in return for the payment of a placement fee.

## 2. PRODUCTION AND DELIVERY

**2.1** The Producer shall produce the Work, based on the requirements agreed in the Service Contract and based on the approved production details, including any creative and technical modifications agreed during the course of the production.

The Work shall comply with the customary international quality standards for the production of films in every respect.

The Customer understands that the Producer is not able to guarantee that any software components included in the Work (e.g. in the case of multimedia productions, on the internet or on data carriers) can be used without interruption or malfunction on all platforms.

**2.2** To ensure that the expectations of both the Customer and Producer are aligned, interim presentations in the form of periodic acceptance checks are to be undertaken during specific phases of the production (e.g. PPM, picture editing, sound mixing etc.). Agreements by the parties on the occasion of such interim presentations shall form a binding basis for the subsequent workflow.

**2.3** The framework conditions defined in the original production briefing may be specified in greater detail in contact reports as the work progresses. Contact reports of this nature shall form an integral part of the contract.

**2.4** The Customer undertakes to fulfil all his cooperation duties in a timely manner in order not to delay the time schedule and to ensure delivery to a sufficient standard of quality.

**2.5** The Producer undertakes to take into consideration any revisions or changes proposed by the Customer as long as they are not unreasonable and fall within the agreed framework conditions. Enlargements, modifications or changes that go beyond the originally agreed scope of the work shall result in a corresponding increase of the Price, and may result in an adapted time schedule.

**2.6** Should the production be delayed in a manner that could neither have been foreseen nor influenced by the Producer (e.g. periods of adverse weather, disruption to suppliers' operations, delayed delivery of products, text and other documentation by the Customer, etc.), the delivery date shall be adjusted to reflect the delaying factors. The Producer shall inform the Customer immediately about the extent and consequences of the delay (postponement of shooting, additional costs etc.) as soon as it occurs. Failure to adhere to the delivery deadline shall in such cases only entitle the Customer to a price reduction or termination of the contract if it can be proven that the Producer's actions constituted gross negligence.

**2.7** The Customer may only refuse to accept the Work if it has serious defects or if the Work deviates considerably from the agreed framework conditions. In this case, the Producer must be set a reasonable period of grace in writing, in order to implement improvements once the claimed defects have been described in detail.

**2.8** Unless there is any agreement to the contrary regarding the scope of delivery, the Producer shall deliver the finished Work on a storage medium customarily used in the sector, which serves for the intended use or shall make the finished Work available for downloading by the Customer.

The software, control data, the source codes, the data sets and parameters (commonly referred to in the sector as "open data") that were used by the Producer to create the Work, shall not form part of the scope of delivery.

## 3. CANCELLATION OF THE PRODUCTION

**3.1** Should the Customer cancel the production after the contract has been concluded, but before the planned first day of shooting, the Customer shall be liable as follows:

**a) Cancellation notified no later than 10 days before the planned first day of shooting:** For all costs incurred by the Producer including contractual obligations vis-à-vis third parties prior to receipt of written cancellation plus the full mark-up (handling expenses and profit) calculated on the basis of the Price.

**b) Cancellation notified between 9 and 5 days prior to the planned first day of shooting:** For all costs incurred by the Producer including contractual obligations vis-à-vis third parties prior to receipt of written cancellation, but at least 50% of the Price plus the full mark-up (handling expenses and profit) calculated on the basis of the Price.

**c) Cancellation notified less than 5 days prior to the first day of shooting:** For the full Price of the Work as contractually agreed between the Parties.

**3.2** All rights to any already existing recordings and to the results of the preparatory works performed shall remain with the Producer. The Producer shall not be entitled to make use of recordings, made within the scope of the contract, for any other purpose unless approval from the Customer has been obtained.

**3.3** In the event of force majeure preventing completion of the production (in accordance with the agreed conditions), the party affected may withdraw from the contract. However, the Customer shall be obliged to compensate the Producer for the work already undertaken and any additional costs that can be substantiated, including mark-up (handling costs and profit).

#### 4. ASSUMPTION OF RISK AND INSURANCE

**4.1** The Producer shall bear the risk for all interests under his control and responsibility and shall take out insurance for these in so far as this is required by law or appears to be sensible, such as:

- Insurance required by law for all permanent and freelance employees engaged by the Producer;
- Third-party liability insurance to cover losses.

If the Customer requires that an additional insurance policy is taken out (e.g. insurance covering image, sound and data storage media, the unavailability of personnel or the weather, or the insurance of special props), the Customer must inform the Producer of this no later than the time at which the contract is concluded.

The respective insurance fees are to be borne by Customer or shall be factored into the Price.

**4.2** The Customer shall bear the risk for interests or shooting locations under his direct control or under the control of any third party (agency) engaged by him (such as shooting on the Customer's premises). The Customer shall bear the risk for the props and products that he provides.

In the event that the Client provides the Producer with image and sound recordings or other materials for the purpose of producing the Work, the Client guarantees that the recordings and materials provided do not violate legal provisions or third-party rights, and the Client shall indemnify the Producer against any claims in regard thereto.

**4.3** Once the Work has been delivered, the risk associated with the Work shall be transferred to the Customer, even if the master is stored by the Producer or one of his suppliers (laboratory, post-production company).

#### 5. PRICE

**5.1** The Price for the Work (the "Price") as specified in the contract shall cover the production of the Work by the Producer

as well as payment for the rights of use explicitly granted to the Customer in the contract.

**5.2** The Price is understood to be a fixed price (in CHF, excluding value-added tax (VAT)). For that reason, the Customer is not entitled to view an itemisation of the costs incurred by the Producer while producing the Work. Cost items that form part of an offer are merely guideline values. Only the total price (the Price) is binding.

**5.3** The following are not included in the Price:

- Costs incurred by Customer if shooting takes place on his premises and/or resulting from the involvement of his employees;
- Costs payable to third parties (e.g. agencies) engaged by the Customer;
- Changes or deviations from the agreed conditions of the Service Contract requested or accepted by the Customer that result in additional costs;
- Charges for rights that are administered by collecting societies, specifically for the production and use of the Work.

**5.4** Special risks (e.g. adverse weather conditions, shooting involving animals/children) may result in additional costs not included in the Price and must be borne by the Customer.

#### 6. RIGHTS TO THE WORK

**6.1** The Producer shall acquire all the necessary rights from originators (the director, script writer) and other holders of neighbouring rights engaged by him, in order to enable the Work to be used by the Customer in accordance with the contract, with the exception of the rights indicated under clause 6.2.

In the case of audio-visual works, a comprehensive granting of rights unlimited by time, location or the media that may be used ("full buy-out") is generally not a sensible option, as it gives rise to unnecessary costs for rights that are often not exercised. In many cases, a full buy-out is not even possible, as many originators and holders of neighbouring rights do not offer such a full buy-out.

**6.2** The rights for the use of music, archive material, third party works (architecture, designs etc.), performances by actors, speakers etc. are to be regulated and paid for separately (licensing for one year is customary in the sector.) The amount of the compensation to be paid depends upon the type of use of the Work, the territory in which it is used, the duration of use and the respective media budgets.

In the event that the Customer wishes to extend the contractually agreed use, the Producer may then negotiate the additional rights and the remuneration required with the right-holders on the behalf of the Customer.

**6.3** Once the Price has been paid in full, unless agreed otherwise between the Parties and subject to the limiting stipulations in clauses 6.1 and 6.2, the Producer shall grant the Customer the following rights within the contractual territory of Switzerland (the "Territory") from the date of the planned first use onwards.

**a) For all works, excluding commercials:**

For a period of 5 years.

l) the right to publish the Work in the Territory;

II) the public performance right, i.e. the right to publicly show or have shown the Work in the Territory, as often as required, whether for commercial or non-commercial purposes (incl. company-internal showings), by means of technical facilities;

III) the right to make available the Work on the Customer's website (including owned social media channels, but not being used as paid advertising) to users within the Territory;

IV) the archival right, namely the right to make the Work passively available on the intranet and on websites and social media channels belonging to the Customer for an unlimited period.

**b) For commercials:**

For a period of 3 years.

I) The right to publish the Work in the Territory;

II) the public performance right, i.e. the right to publicly show or have shown the Work in the Territory, as often as required, for a period of three years whether for commercial or non-commercial purposes (incl. company-internal showings), by means of technical facilities;

III) the broadcasting right, i.e. the right to publicly broadcast the Work on television stations within the Territory as often as required;

IV) the right to make the Work available to users on the Internet within the Territory, including use as paid media on the internet and on social media (please note: the use of the Work on YouTube, Facebook or on other social media may require worldwide rights! Those rights need to be obtained and cleared separately.).

V) the archival right, namely the right to make the Work passively available on the intranet and on websites and social media channels belonging to the Customer for an unlimited period.

**6.4** Once the period of use as agreed in clause 6.3 hereinabove or an individually agreed period of use has expired, the period of use of the agreed rights (with the exception of the rights in accordance with clause 6.2, see below) may be extended by paying, to the Producer, an annual fee equal to 10% of the Price.

The rights in accordance with clause 6.2 are to be obtained and paid for separately. The Producer may make the necessary requests on the Customer's behalf in return for a fee.

**6.5** Should the Work be used in other territories than stipulated in clause 6.3 or as individually agreed, a percentage surcharge must be paid based over and above the Price, in the case of territorial expansion as follows:

- a) EU: 30% of the Price;
- b) worldwide rights: 50% of the Price;
- c) individual countries: by individual agreement.

Once these additional charges are paid, the specified rights, excluding the restrictions in accordance with clause 6.2, shall be deemed paid for a period of one year following the first use of the Work in the respective additional territory.

**6.6** The Producer is not in a position to guarantee an extension of the originally agreed period of use or territory or type of

use since this may be dependent on the Director and additional third parties granting the necessary additional rights.

**6.7** In return for payment of the costs involved, the Customer shall be entitled to order any number of additional copies of the Work and, where the need arises and if technically (still) possible, different language versions, as well as changes or amendments to the Work from the Producer.

**6.8** All rights that have not been expressly granted, shall remain with the Producer, in particular:

a) the right of adaptation, i.e. the right to make changes, cuts and/or adaptations or produce other versions or remakes of the Work, or prequels or sequels thereto;

b) the right to name the Producer, the originators and interpreters in the work and in the related publications;

c) the right to show the Work at competitions or festivals or to use it for the Producers' own advertising and for PR purposes or to use it in any other way for this purpose (showreels, internet, etc.);

d) the rights to all ideas and concepts that the Producer has developed, but that have not been incorporated into the Work. These may be freely used by Producer for any other purpose. The Customer and agency/agencies may not use ideas or concepts that the Producer has developed and shared with them, but that have not been implemented or executed without the prior written consent of the Producer, and not without payment of a fair compensation;

e) The rights to software, plug-ins, scripts etc. that have been used to create the Work or used otherwise.

**6.9** The Producer shall not bear any liability,

- for conformity with the law of content that was not developed by the Producer;
- for any infringement of third-party rights arising from the unauthorised processing of the Work that is undertaken by, or on behalf of, the Customer;
- for use extending beyond the contractually agreed use;
- for use on the internet, not explicitly authorised by the Producer in advance.

The Customer shall indemnify the Producer against all third-party claims with regard to the above, including the costs of engaging lawyers and judicial costs.

**6.10** The Producer, or the respective originators and interpreters, are entitled to any payments from collecting societies.

**6.11** Should the parties, contrary to the above-mentioned provisions concerning the limited granting of rights, agree on a "buy-out" or include a clause that transfers "all rights" to the Customer or something similar, then this shall only be understood to refer to the granting of all rights created by Producer's employees in fulfilment of this contract. The rights created by key parties in the sense of copyright, such as the director, the author of the screenplay, the composer, the actors, the speakers etc. are always to be regulated explicitly, i.e. by stating the name and function and type of right granted (territory, period of use, type of use etc.). This applies also to music, archive materials, third-party works (for example architecture, designs), etc.

## 7. STORAGE

**7.1** Ownership of the original ("master"), as well as the rights to sound and image recordings not used in the Work shall remain with the Producer. The Producer undertakes to store the master free of charge and in a professional manner for a period of at least five years following acceptance of the Work. The Producer shall be under no obligation to store any unused sound or image recordings.

**7.2** Once this period has expired, the Producer shall be entitled to make an offer to the Customer in writing to continue to store the master in return for payment. If the Customer declines the offer or fails to respond to the offer within 30 days, the Producer shall be entitled to send the materials to the Customer or to destroy them.

**7.3** Specially produced props, drawings, files etc. shall only be stored if the Customer so wishes and at the Customers' expense. Unless instructed otherwise, the Producer shall be entitled to destroy the above-mentioned materials, following acceptance of the Work.

## 8. TERMS OF PAYMENT

Unless otherwise agreed, the following terms of payment shall apply:

### 8.1 For commercials:

- 1/2 upon conclusion of the contract;
- 1/4 before the planned first day of shooting;
- 1/4 upon final acceptance.

### 8.2 For other Works:

- 1/3 upon conclusion of the contract;
- 1/3 before the planned first day of shooting;
- 1/3 upon final acceptance.

**8.3** If any of the above mentioned or individually agreed partial payments are not received by the Producer in due time, the Producer shall be entitled to postpone or terminate the Production and to claim compensation in full from the Customer.

## 9. MISCELLANEOUS PROVISIONS

**9.1** In the event that a difference of opinion arises, the Swissfilm Association shall, at the parties' request and at their expense, provide an expert or a mediator.

**9.2** Should either party become insolvent or should bankruptcy, probate or similar proceedings be initiated on a party's assets, the other party shall be entitled to withdraw from the contract with immediate effect.

**9.3** This contract and all individual transactions based on this contract shall be governed by and construed in accordance with **Swiss law** excluding any conflict of law rules and international treaties, in particular the CISG.

**9.4** Any disputes arising from or in connection with this contract or any individual transactions based on this contract are to be settled **exclusively by the ordinary courts competent at the domicile of the Producer.**

**9.5** The place of performance shall be at the Producer's domicile.

**9.6** In the event of any contradictions between these GTC and any individual agreements between the parties relating to the Work, the individual agreements take precedence over the GTC.

In the event of any contradictions between these GTC and other general terms and conditions or other general contractual and delivery conditions or similar, these GTC shall take precedence over the other provisions. This applies even if other provisions include a priority clause as well. The sole exception to this stipulation shall be differing general terms and conditions issued by a member of the Swissfilm Association, which shall take precedence over these GTC.

**9.7** In June 1995, the association previously known as the SFVP drafted the General Terms and Conditions (GTC). Revised versions thereof entered into force on 15 September 2003, on 1 April 2005 and on 1 March 2012 respectively. As of 1<sup>st</sup> august 2019, this version is in force and applies to all contracts regarding the production of an audio-visual work, made after 1<sup>st</sup> august 2019.

**9.8** These GTC are issued in the German, French and English languages. In the event of deviations or contradiction between the various language versions, the German version shall prevail.

Swissfilm Association, Zurich, 1<sup>st</sup> August 2019