

# INTERMISSION FILM LTD

## Conditions of Business

### 1. Definitions

In these conditions, the following terms shall have the following meanings:

The 'Company' means Intermission Film Limited of Unit A, 49 Hackney Road, London, E2 7NX upon whose document these conditions are endorsed.

The 'Customer' means the person, firm, company or other body to whom such document is addressed.

These 'Conditions' means these conditions of business; and

The 'Contract' means the contract to which these Conditions apply and which incorporate these Conditions.

### 2. Formation of Contract

2.1. All goods, services or facilities are offered and all contracts are entered into subject to the following conditions of business. Subject always to condition 15.4 all other terms, conditions or warranties whatsoever are, to the maximum extent permitted by law, excluded from the contract or any variation thereof unless expressly accepted by the Company in writing. No servant or agent of the Company has the power to vary these conditions orally or to make any statement or representation about the goods, services or facilities offered, their fitness for any purpose or any other matter whatsoever.

2.2. These conditions shall be incorporated into any contract between the Company and the Customer to the exclusion of any terms or conditions stipulated or referred to by the Customer. Any dealings with the Company following receipt by the Customer of notice of these conditions shall automatically be deemed acceptance thereof notwithstanding the absence of formal acknowledgement.

2.3. Unless otherwise expressly stated in writing, all quotations and estimates supplied by the Company are invitations to treat. The Customer's order is an offer and shall become binding upon acceptance by the Company.

### 3. Prices

3.1. All prices quoted are exclusive of VAT. Unless otherwise mutually agreed in writing, the Company's quoted prices are for services and materials requiring standard procedures based upon the use of the Company's facilities and personnel during normal working hours. The Company shall further be entitled to make an adjustment to the quoted price in the event that:

- Additional costs are incurred by the Company due to materials supplied by the Customer or any third party being in the opinion of the Company, in any way defective, in an unsuitable format (or a different format to that which the Company is expecting to receive the same) or of unsuitable quality for normal processing; or
- The information supplied by the Customer or any third party in connection with its order does not provide a full and accurate indication of the work involved; or
- additional costs are incurred by the Company, due to alterations by the Customer or any third party in

its requirements.

- additional costs are incurred by the Company due to exceptional circumstances outside the control of the Company, including currency fluctuations and changes in third party costs.

#### **4. Performance, Delivery or Collection**

4.1. Unless otherwise agreed in writing, all times quoted for performance or delivery or availability for collection are given in good faith but are not guaranteed. Notwithstanding that the Company and the Customer may have agreed that time is of the essence, the time for performance or delivery or availability for collection shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Alteration by the Customer of its requirements may result in delay in performance, delivery or availability for collection.

4.2. Any packaging supplied by the Company, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of transport by the means specified in the contract or as may be otherwise agreed. If the Customer (or the intended recipient) fails to take delivery on the agreed delivery date or to collect on the agreed collection date or, if no specific delivery or collection date has been agreed, when the goods are ready for despatch, the Company shall be entitled to store the goods and to charge the Customer the reasonable costs of so doing and to tender its account for such charges under condition. Notwithstanding the terms of condition 7.1 below, the Company shall be under no liability in respect of any loss or damage following the despatch of any goods from the Company's premises.

4.3. If the Company and the Customer shall agree that any goods shall be delivered electronically or via any form of telephony ("Direct Delivery") the following provisions shall as applicable apply:

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

- The Company shall not be responsible for and shall have no liability to the Customer or any third party for:

any delay to any Direct Delivery or any non receipt of any goods delivered by Direct Delivery; any loss or damage that results from any person gaining

unauthorised access to any Direct Delivery of any goods; use or disclosure of any data obtained by any third party as a result of the same having gained unauthorised access to any Direct Delivery; and any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, Trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any Direct Delivery.

#### **5. Terms of Payment**

5.1. Subject to condition 5.2 and unless otherwise agreed by the Company in writing all invoices rendered by the Company are payable within 30 days of the dates thereof.

5.2. The Company expressly reserves the right at its sole option to require payment by instalments during the performance of the contract and/or payment of all amounts owing to the Company immediately prior to delivery or making goods available for collection.

5.3. The Customer shall pay all amounts owing to the Company in full and shall not exercise any rights of set off or counterclaim against invoices submitted. Payment of all amounts shall only be made in the currency in which they are invoiced and shall not be subject to any deductions/charges whatsoever.

5.4. In the event of default in payment by the Customer under any contract between the Customer and the Company, the Company shall be entitled, without prejudice to any other right or remedy, to suspend any further performance of or deliveries under any contract or contracts between the Company and the Customer without notice and to charge interest on any amount outstanding at the rate of 4% above LIBOR from time to time (accruing from day to day both before and after judgment), from the due date of payment to the actual date of payment.

5.5. All prices quoted or agreed are exclusive of any applicable value added tax, which the Customer shall be liable to pay in addition.

## **6. Cancellation**

6.1. Any contract between the Company and the Customer may only be cancelled or varied with the written consent of the Company and upon the terms of these conditions. The giving of the Company's consent shall not in any way prejudice the Company's right to recover from the Customer full compensation for any loss or expense arising from such cancellation or variation.

6.2. If notwithstanding condition 6.1 and without prejudice to any other rights or remedies available to the Company, the Customer shall give the Company notice of cancellation of an order which notice is received by the Company:

- less than 48 hours prior to, as applicable, the date for performance or the commencement of performance or the date on which the applicable facilities were to be utilised by or on behalf of the Customer (the "Contract Date"), the Company shall be entitled to charge the Customer the full contract price or, if none is stated, the applicable amount under the Company's rate card current at the Contract Date; and
- less than seven working days but more than 48 hours prior to the Contract Date, the Company shall be entitled to charge the Customer one half of the contract price or, if none is stated, one half of the applicable amount under the Company's rate card current at the Contract Date in each case reflecting the fact that the Company is unlikely to be able to secure an order for the facilities that had been allocated to the processing of the Customer's order from a third party within the time available.

## **7. Liability**

7.1. The Customer hereby agrees that without limiting any other provision of these conditions:

- to the maximum extent permitted by law the Company's entire liability for breach of any provisions of the contract, or any terms, warranties or conditions implied in the contract by operation of law, including the Company's liability for negligence (except where such negligence results in death or personal injury) are excluded;
- under no circumstances shall the Company be liable for any consequential loss whatsoever (including damages for loss of business profits, business interruption or other indirect pecuniary loss of any kind);
- the Company's entire liability for any direct loss suffered by the Customer, as a result of the

Company's breach of the contract and for which the Company shall notwithstanding any other provision of the contract be liable, shall (subject to the terms of conditions 4.2, 4.3 above and 9.1 below) be limited to the amount actually paid by the Customer in accordance with the contract;

- the price to be paid by the Customer under the contract reflects the limitation on the liability accepted by the Company; and
- this condition 7.1 is reasonable and necessary in the circumstances and that having regard to that fact, this condition does not work harshly or unreasonably against the Customer.

## **7.2. The Customer shall indemnify the Company from and against:**

- all claims or proceedings taken against the Company by any third party including any client of the Customer, the Company's employees, the Customer's employees or the employees of any contractor employed by the Customer or the Company or the personal representatives or dependants of any such employee or other third party in respect of personal injury or damage to property caused by or arising out of any act or omission of the Company in the course of carrying out the specific instructions of the Customer;
- all claims or proceedings taken against the Company arising out of the acts and/or omissions of the Customer, its agents or subcontractors or any of their respective employees, whether negligent or otherwise.

7.3. The Customer expressly agrees that it will at all times maintain and keep effective insurance policies with reputable insurers with sufficient cover which protect the Customer against any loss or liability which it may incur or suffer arising out of the contract or any act or default of the Company in the performance by the Company of its obligations to the Customer. Such insurance shall include insurance for any damage or loss for which the Company is not liable pursuant to the conditions hereof, insurance which protects the Customer against any accidental loss, damage or destruction to any master tapes, film negative prints, sound tapes, video tapes or visual images or sound held in any media or any other materials of any kind supplied to the Company whilst in the possession or control of the Company. The Company accepts no liability for any liability or loss which arises from any failure by the Customer to maintain and keep effective such insurances.

7.4. Any recommendations or suggestions relating to the use of any goods supplied by the Company are given in good faith but it is for the Customer to satisfy itself of the suitability of the goods for its own particular purpose. Accordingly unless otherwise expressly agreed in writing and notwithstanding and without limiting condition 7.1, the Company gives no warranty as to the fitness of the goods for any particular purpose even though that purpose may be specified in the Customer's order and any implied warranty or condition (statutory or otherwise) to that effect is excluded.

7.5. In the case of goods or component parts of goods supplied by the Company but not of the Company's manufacture, the company shall be entitled to assign to the Customer its rights against its supplier and such rights shall be taken in extinction of and in substitution for any rights which the Customer would otherwise have had against the Company.

## **8. Intellectual Property and Data Protection**

8.1. The Customer shall indemnify the Company from and against all actions, claims, costs, charges,

expenses and proceedings arising from or incurred by reason of any defamatory or libellous matter or any infringement or alleged infringement of any patent, trademark, copyright, registered design or design copyright or other exclusive right including any moral right claim or any other title of any third party in respect of any work carried out for the Customer by the Company.

8.2. Each of the Company and the Customer acknowledge and agree that copyright in underlying materials processed by the Company in the performance of its services and/or embodied in materials produced by the Company may be owned by third parties and that the use by the Customer of all materials processed and/or produced by the Company shall be subject always to the Customer obtaining any and all necessary licences and consents from the relevant underlying rights owner(s).

8.3. The Company may publicise, advertise and market the Works on its website(s), social media site(s), blog(s), in pitches to third parties, in connection with any appropriate industry awards, or in any other manner, as the Company may in its sole discretion decide, without the prior written consent of the Customer.

8.4. The Customer hereby grants to the Company a perpetual and royalty-free licence to use the Works throughout the world for the purposes of clause 8.3 above and in order for the Company to promote its business by whatever means it sees fit.

8.5. Without limitation to the rights of the Company at law, the Customer acknowledges and agrees that if, in the course of fulfilling the Customer's order and/or processing or producing materials on behalf of the Customer, the Company discovers or devises any techniques or know how, all rights of every kind in and to such techniques and know how, shall vest absolutely in the Company.

8.6. The Customer acknowledges that in the course of its dealings with the Company, the Company may acquire personal data which relates to the Customer and/or any of its officers, employees or contractors and the Customer hereby consents to the Company, in accordance with its authorisation and the Act, collecting, storing, processing and transferring to third parties such personal data. The Customer further consents to the sale or transfer by the Company of such personal data in connection with an assignment or transfer of any of its assets and its disclosure in compliance with any rule of law or order of competent authority.

8.7. The Customer's consents pursuant to this condition 8 are given by it for itself and on behalf of (if any) its officers, employees and contractors and the Customer hereby warrants to the Company that it has the authority to give such consent on behalf of those persons.

## **9. Customer's Materials**

9.1. Where the Customer supplies any materials to the Company or where any materials or goods which are the property of the Customer are otherwise left in the Company's possession:

- notwithstanding the terms of condition 7.1. above, the Company shall be under no liability in respect of any loss or damage or otherwise arising as a result of damage to or the loss or destruction of such materials or goods;
- without limiting the terms of condition 7.3 above, the Customer shall insure all such materials or goods to their full value against all risks; and

· the Customer shall remove all such materials or goods within six months of the date of issue of the Company's invoice relating to such materials or goods in respect of which the materials have been utilised and in default, The Company shall be entitled to return all such materials or goods to the Customer and to charge the Customer for any costs and expenses incurred by the Company in so delivering such materials or goods. Until the removal or return of the materials or goods, the Company shall be entitled to store the materials and goods and to charge the Customer the reasonable costs of so doing and to tender its account for such charges under condition 5. In the event that the Company does not so return such materials or goods, the Company shall be under no liability whatsoever for any loss or damage to such materials or goods whilst they are in the possession of the Company and the Customer is advised to maintain insurance to the full value of such materials or goods against all risks.

9.2. Where materials are supplied or specific instructions are given by the Customer, the Company accepts no liability for any reduction in the quality of the Company's services caused by defects in or the unsuitability of such materials so supplied or by the Company's adherence to such specific instructions.

## **10. Risk and Title**

10.1. Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the goods the subject of the contract:-

- if the Company delivers the goods by its own transport or, in accordance with a specific contractual obligation, arranges transport for the goods at the time when the goods or a relevant part thereof arrive at the place of delivery; or
- in all other circumstances, at the time when the goods or a relevant part thereof leave the premises of the Company, or
- if risk otherwise passes in accordance with the conditions hereof.

10.2. Title to the goods the subject of the contract or any relevant part thereof shall only pass to the Customer upon the Customer paying to the Company all sums due and payable by it to the Company under the contract and all other prior contracts between the Company and the Customer;

10.3. The Company may recover goods in respect of which title has not passed to the Customer at any time.

10.4. Until title to the goods has passed to the Customer pursuant to the terms hereof:

- it shall possess the goods as a bailee of the Company on the terms of these conditions;
- if the Company so requires the Customer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company;

10.5. The Customer hereby irrevocably authorises the Company, its officers, employees and agents to enter upon any premises of the Customer for the purpose of repossessing any goods in respect of which title has not passed to the Customer and/or to ensure that the provisions of this condition 10 are being complied with.

## **11. Customer input and access to/use of the Company's premises and equipment**

11.1. The Customer shall be solely responsible for ensuring that all information, advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's

agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by the Company of such information advice or recommendations shall in no way limit the Customer's responsibility hereunder unless the Company specifically agrees in writing to accept responsibility.

11.2. The Customer hereby undertakes to the Company to ensure that all of its personnel (to include all employees and agents of the Customer) that shall at any time have access to any premises occupied by the Company or at which any of the Company's equipment shall be kept all such persons shall at all times:

- observe all rules and regulations in force at the applicable premises to include health and safety regulations and any rules governing the use of equipment and/or facilities at the applicable premises;
- keep confidential and not divulge or communicate or make any use of any confidential information (being any and all information which relates to and/or concerns the business or activities of the Company and/or any customer of the Company) which the applicable person shall become aware of as a result of being present at the applicable premises.

11.3. The Customer shall indemnify the Company from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any breach or non observance of any provision of condition 11.2 by any of the Customer's personnel.

## **12. CONFIDENTIALITY**

12.1 Where Confidential Information has been disclosed to the Customer, the Customer acknowledges that such Confidential Information has been disclosed in confidence, may have considerable value and is of significant importance to The Company.

12.2 The Customer further acknowledges that the Company makes no representation with respect to the accuracy or completeness of any Confidential Information, except to the extent agreed by the Company in writing.

12.3 The Customer agrees to keep the Confidential Information, in complete confidence and not to disclose it to any third party. Save as expressly permitted under this Agreement, the Customer shall not use, copy in whole or in part, modify or adapt the Confidential Information in any way without The Company's prior written consent, which may be given or withheld in its absolute discretion.

12.4 The Customer may use the Confidential Information only for the purposes contemplated by this Agreement and for no other purpose. The Customer may disclose the Confidential Information to such of its officers, employees and agents to whom disclosure is necessary for the performance of its obligations under this Agreement provided the Customer shall ensure such officers, employees and agents observe the obligations of confidentiality imposed by this clause 12 and the Customer shall be liable for any failure by them to do so.

12.5 The Customer shall not be in breach of this clause 12 if it discloses Confidential Information where such disclosure is required by law, regulation or order of a competent authority provided that the Company is given, where possible, reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

12.6 The Customer acknowledges that any breach of its confidentiality obligations under this clause 12 would cause the Company irreparable and unquantifiable damage and that the Company shall be entitled to apply for and obtain (without prejudice to any other rights or remedies available to the

Company in contract or at law) interlocutory and/or final injunctive or other equitable relief against or in respect of any actual or threatened breach of this clause 12 by the Customer.

12.7 On receipt of a written demand, the Customer shall return to the Company, or destroy at the Company's option, any and all written documents or materials containing Confidential Information, together with all copies thereof, and if the Company should so require the Customer shall, when returning documents or materials, provide to the Company a certification or statutory declaration duly executed by an officer of the Customer confirming that, to the best of the declarant's knowledge, information and belief, the Customer has complied with all of its obligations under this clause 12.

### **13. Insolvency**

If the Customer shall become bankrupt or under the provisions of Section 123 of the Insolvency Act 1986 shall be deemed to be unable to pay its debts or compounds with its creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager or Administrative Receiver is appointed of all or any part of its assets or undertaking, the Company shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Company.

### **14. Force Majeure**

In the event of the performance of any obligation accepted by the Company being prevented, delayed, or in any way interfered with by any act of government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond the Company's control, the Company may at its option suspend performance or cancel its obligations under the contract without liability for any damage or consequential loss resulting therefrom, such suspension or cancellation being without prejudice to the Company's right to recover all sums owing to it in respect of goods delivered and costs incurred up to the date of the suspension or cancellation.

### **15. Subcontractors**

The Company shall be entitled to appoint one or more subcontractors to carry out all or any of its obligations under any contract between the Company and the Customer.

### **16. General**

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

16.2. Where appropriate and required by the Company (but not otherwise), screen credits shall be given to the Company and nominated individuals for all goods, services or facilities supplied by the Company.

16.3. Headings used in these conditions are purely for ease of reference and do not form any part of or affect the interpretation of these conditions.

16.4. Nothing in these conditions shall operate to relieve the Company from any liability for any fraudulent misrepresentation made to the Customer at any time.

16.5. If any provision of this contract as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this contract or the validity or enforceability of this contract generally.

16.6. References to the Company shall, as the context permits, include its licensees, subcontractors and assigns.

16.7. References to goods shall include any and all forms of audio and audio visual material processed and/or produced by the Company on the Customer's behalf such as advertisements.

16.8. The words "include" and "including" shall not be construed restrictively.

## **17. Legal**

The contract shall be governed and interpreted exclusively according to the Law of England and shall be subject to the jurisdiction of the English Courts only.