

**MOMENT PRODUCTIONS**



**TERMS AND CONDITIONS**

**FOR THE SUPPLY OF SERVICES**

**1. INTERPRETATION**

1.1 In these Terms the following definitions apply:

“Charges”	the fees payable by the Customer in respect of the Services, details of which are available from <b>Moment Productions</b> and as may be varied from time to time;
“Customer”	the person, firm or corporate body requiring the Services from <b>Moment Productions</b> , which expression shall include, where the context requires, the Customer’s employees, agents and sub-contractors;
“Customer Materials”	any material provided by the Customer in respect of which the Services are to be provided;
“Contract”	together, <b>Moment Production’s</b> quotation or acceptance of the Order and these Terms;
“Deliverables”	all documents, products and materials produced by <b>Moment Productions</b> in respect of any Order for delivery to the Customer;
“Moment Productions”	Moment Productions Ltd, of Venture House, 65 London Wall, London, EC2M 5TU and, as the context requires, its employees, agents and subcontractors;
“Order”	the Customer’s order for the Services, as defined in clause 3.1;
“Services”	the services to be provided by <b>Moment Productions</b> to the Customer pursuant to the Contract which may consist of Technical Services such as quality assessment, film transfer, video editing, tape duplication, content assessment, film and tape storage, materials management; and Media Access Services such as subtitling, audio description and/or video signing; and in each case the preparation of the associated Deliverables.

1.2 These Terms shall supersede any terms of business proffered by the Customer. No waiver or variation of these Terms shall be valid unless written and signed by a Director of **Moment Productions**.

1.3 In these Terms references to the singular include the plural and vice versa where the context requires.

**2. INTRODUCTION**

2.1 These Terms shall govern all quotations given, Orders received and accepted and work undertaken by **Moment Productions** on behalf of the Customer. Acceptance of any quotation or the placing of any Order with **Moment Productions** shall be deemed to constitute acceptance of these Terms.

2.2 **Moment Productions** shall provide the Services using all reasonable skill and care and, as far as reasonably practicable, in accordance with the Order.

### 3. ORDERS

3.1 All Orders must be made by the Customer in writing. No Order submitted by the Customer shall be deemed to be accepted by **Moment Productions** (and no Contract shall arise) unless and until confirmed in writing by **Moment Productions**. Although verbal orders may initially be taken by telephone, these must be then confirmed in writing by the Customer before the Services are scheduled to commence.

3.2 Unless otherwise agreed by **Moment Productions**, completion dates are approximate only and time shall not be of the essence. Whilst every effort shall be made to meet such dates, **Moment Productions** will not accept responsibility or liability if these are not met.

### 4. QUOTATIONS AND CHARGES

4.1 All Charges will be calculated in accordance with those prevailing at the date of the Order unless a written quotation has been provided to the Customer by **Moment Productions**, in which event the Charges will be calculated in accordance with the written quotation, save as may be modified pursuant to this Clause 4.

4.2 If a written quotation has been provided, the applicable Charges may be subject to modification in any of the following circumstances:

4.2.1 in the event of the Customer's omission or errors in the information supplied to **Moment Productions** on which the quotation was based;

4.2.2 any increases in costs from **Moment Production's** suppliers or otherwise suffered by **Moment Productions**;

4.2.3 any extra costs incurred due to the nature of the Customer Materials.

The Customer will be informed of any such modifications to the Charges as soon as reasonably practicable.

4.3 A quotation is subject to withdrawal at any time before an Order is confirmed pursuant to clause 3 and such quotation shall be deemed to be withdrawn unless such Order is confirmed within 30 days or such other period as may be specified in the quotation.

4.4 The Customer shall meet the costs of any special packaging required by the Customer or by virtue of delivery being required by the Customer by any means other than **Moment Production's** normal means of delivery.

### 5. CANCELLATION

If notice of cancellation of an Order is received by **Moment Productions** at any time after the Services have commenced then **Moment Productions** reserves the right to impose on the Customer a cancellation fee calculated by reference to the Charges that would have been payable if the Order had been completed.

### 6. CUSTOMER MATERIALS

6.1 Unless otherwise agreed with **Moment Productions** the Customer shall be responsible for delivering the Customer Materials to **Moment Production's** premises to enable **Moment Productions** to complete the Services in accordance with **Moment Production's** quotation or acceptance of Order. Similarly, unless otherwise agreed, the Customer shall also be responsible for collecting the Customer Materials from **Moment Production's** premises upon notification by **Moment Productions** of completion of Order.

6.2 All Customer Materials shall be received and stored by **Moment Productions** solely at the Customer's risk. **Moment Productions** will not, in any circumstances, be responsible for any damage (howsoever caused) to or any

loss of any Customer Materials entrusted to or held by it. The Customer will insure all such Customer Materials against all risks whilst they are in the possession or under the control of **Moment Productions**.

6.3 Where **Moment Productions** has possession of any Customer Materials for the provision of the Services the Customer warrants that:

6.3.1 **Moment Production's** possession of the Customer Materials and provision of the Services in relation to the Customer Materials will not give rise to any liability on the part of **Moment Productions**;

6.3.2 the Customer has obtained all rights, licences, permissions or consents as may be necessary to enable **Moment Productions** to render the Services in respect of the Customer Materials and to produce the Deliverables.

6.4 The Customer shall indemnify and keep indemnified **Moment Productions** against all actions, proceedings, claims, demands, damages, costs and expenses incurred or suffered by **Moment Productions** by reason of or in respect of:

6.4.1 any breach or alleged breach of any matters warranted by the Customer under Clause 6.3;

6.4.2 any loss or damage to property caused by or arising out of or in connection with the use by **Moment Productions** of any Customer Materials.

6.5 As between **Moment Productions** and the Customer, all intellectual property rights in the Deliverables (including without limitation, copyright, patents, trademarks, design rights and confidential information) shall be owned by the Customer. **MOMENT PRODUCTIONS** shall (and shall procure that any applicable sub-contractors) obtain waivers of moral rights in the Deliverables.

6.6 **Moment Productions** reserves the right to erase recorded material from any Customer Materials not collected from **Moment Production's** premises within 3 months from completion of the Services, subject to giving the customer 1 month's prior notice in writing. This applies to any Customer Materials retained by **Moment Productions** in accordance with clause 7.

## 7. PAYMENT

7.1 The Customer shall pay the full amount of any invoice issued by **Moment Productions** without deduction or set-off within 30 days from the date of the invoice ("the Due Date"). Time for payment of **Moment Production's** invoices shall be of the essence of this Contract.

7.2 **Moment Productions** reserves the right to require payment of 25% of the Charges in advance where the total value of Order exceeds £1,000.

7.3 **Moment Productions** further reserves the right to retain any Customer Materials until payment is made in full in accordance with this Clause 7 (whether or not the Customer Materials so retained relate to this Contract).

7.4 Unless otherwise agreed, payment shall be made in sterling in full to the offices or bank account of **Moment Productions** or as directed on the invoice.

7.5 **Moment Productions** shall be entitled to charge interest on all overdue invoices at the rate of 2% above the base rate of Barclays Bank PLC from time to time, from the Due Date until the date of payment (after as well as before judgment).

7.6 All Charges are exclusive of VAT which shall be payable by the Customer as applicable.

## **8. MOMENT PRODUCTIONS'S LIABILITY – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE CONTENTS OF THIS PROVISION**

8.1 **Moment Production's** aggregate liability to the Customer whether for misrepresentation, negligence, breach of contract, arising out of the Customer's use of the Deliverables or otherwise shall in no circumstances exceed the higher of the value of the film, video tape, disk or other Customer Materials which are the subject of the Services and the value of the Order and in no event shall **Moment Production's** liability include the value of any material recorded on the Customer Materials. In any event **Moment Productions** shall not be liable for any indirect loss or loss of goodwill or reputation suffered by the Customer as a result of such matters. For the avoidance of doubt **Moment Productions** does not exclude liability for death, personal injury or fraud.

8.2 Except as expressly provided in these Terms, all representations, warranties, conditions, obligations and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.3 Whilst visiting **Moment Production's** premises, the Customer shall obey at all times the lawful orders of any authorised representative of **Moment Productions** and comply with the requirements of any applicable rules and regulations made known to the Customer.

## **9. FORCE MAJEURE**

Every effort will be made by **Moment Productions** to carry out the work in accordance with the Order but **Moment Productions** shall not be liable for any failure or delay to carry out such work as a result of any inability to secure labour, materials or supplies or as a result of any act of God, war, strike or other labour dispute, fire, lightning, severe inclement weather, acts of terrorism, flood, legislation or any other cause (whether of the foregoing class or not) beyond the reasonable control of **Moment Productions**.

## **10. TERMINATION**

10.1 The Contract may be terminated at any time by **Moment Productions** by immediate notice to the Customer in the event that:

10.1.1 The Customer shall be in breach of any of its obligations under these Terms and in the case of a breach capable of remedy, shall not have remedied it to the satisfaction of **Moment Productions** within 7 days of notice to this effect; or

10.1.2 The Customer commits any act or omission indicative of its insolvency.

10.2 Upon termination in accordance with clause 10.1 **Moment Productions** shall be entitled to immediate payment by the Customer of all unpaid or accrued sums owing to **Moment Productions** and to set off for this purpose any sums previously paid by the Customer to **Moment Productions**.

## **11. GENERAL**

11.1 **Moment Productions** and the Customer shall: preserve the confidentiality of all confidential information of the other which it receives (which include the terms of this Contract); keep such information secure and protected against theft, damage, loss or unauthorised access; not use or disclose such information for any purpose except as contemplated by this Contract; and ensure that these obligations are observed by its employees, officers, agents and contractors. The confidentiality obligations imposed by this clause shall survive the termination of this Contract, but shall not apply to information which: is already in or subsequently comes into the public domain

through no fault of the recipient, its employees, officers, agents or contractors; is lawfully received by the recipient from a third party on an unrestricted basis; or is legally required to be disclosed by a competent authority.

11.2 The Contract constitutes the entire agreement between the parties and supersedes any previous agreement or understanding between the parties.

11.3 Any notice required to be given under these Terms shall be in writing and given by hand or sent by first class pre-paid post or facsimile to the parties at their principal place of business or such other address as may be notified for this purpose. Any notice given by post shall be deemed to have been given 48 hours after posting and any notice sent by facsimile shall be deemed to have been duly sent upon receipt by the sender of confirmation of transmission.

11.4 Any time or other indulgence or forbearance given by **Moment Productions** to the Customer shall not in any way whatsoever waive, diminish, restrict or prejudice **Moment Production's** rights.

11.5 The invalidity or unenforceability for any reason of any part of these Terms shall not prejudice or affect the validity or enforceability of the remainder.

11.6 **Moment Productions** may sub-contract any of its rights and obligations under the Contract, but shall remain liable to the Customer in respect of any subcontracted obligations. The Customer shall not, without the prior consent of **Moment Productions**, assign, transfer, charge or sub-contract any of its rights or obligations under this Contract.

11.7 This Contract is made for the benefit of the parties to it and is not intended to benefit or be enforceable by, anyone else.

11.8 These Terms shall be governed by the Laws of England and the parties shall submit to the exclusive jurisdiction of the English Courts.