

# hallmarkproductions

*Moving Images Worldwide*

www.hallmarkproductions.com  
e: info@hallmarkproductions.com

30 Woodside Road  
Parkstone  
Poole  
Dorset BH14 9JJ

t: 0845 644 5406

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## TERMS & CONDITIONS OF SALE

**These Terms and Conditions shall govern each and every order and shall form part of the agreement between us. No variation of any term or condition set out herein shall be effective unless agreed in writing by both parties. The headings in these Terms and Conditions are for convenience only and do not form part of the agreement between us.**

### 1. DEFINITIONS

The words below are agreed to mean as follows:-

"Product"	The product, video programme, event or new media project that we have agreed to develop and produce for you in accordance with the agreed Proposals/Budget attached at Schedule I and/or supplied to you in email format.
"Fee"	The agreed fee for the work carried out by us as set out in our Proposals/Budget at Schedule I and/or supplied to you in email format.
"Intellectual Property Rights"	All copyright, design rights, registered designs, trademarks, patents, confidential information, ideas, moral rights and all other rights whatsoever whether those rights are registered or not.

### 2. PRODUCTION

The Product shall be produced by us in accordance with our Proposals/Budget supplied to you in email format prior to the commencement of contract.

### 3. YOUR OBLIGATIONS

You agree that you will:

- (a) supply us with all source materials to be provided by you for incorporation into the Product by the dates and times specified by us and in the format requested by us;
- (b) co-operate with us in the development and production of the Product;
- (c) formally approve and sign off various stages of the production process upon request by us.
- (d) supply us with a purchase order number, or other written instruction as evidence of acceptance of these terms.

### 4. PAYMENT

You agree that you will pay us:-

- (i) the % of the Fee in cleared funds at time of order and prior to commencement of production, as detailed in our written proposal;
  - (ii) the remaining amount of the Fee and any agreed extras payable in line with the schedule detailed in our written proposal.
- (a) We offer account terms on a discretionary basis and our agreement to such terms will only be effective if in writing and signed by us.
  - (b) We may issue "pro-forma" invoices as an invitation to pay and then issue a "full" invoice when payment has been received and cleared.
  - (c) All terms quoted and payable are exclusive of VAT which will be added where appropriate. We do not operate any duty exempt routines and VAT is payable at the current rate on all figures where appropriate.
  - (d) When we incur out of pocket expenses on your behalf in a currency other than sterling, the re-charged exchange rates are calculated based upon an "actual costs to us" whether for credit, cash, American Express or any other type of transaction.

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- (e) Our quotations may or may not include out of pocket expenses. If they are not included, then actual necessary costs will be subject to our standard agency handling fee of ten per cent (10%). No expense will be committed to without prior notification/agreement.
- (f) Any late payment shall attract interest at the rate of 5% per month above the base lending rate of Barclays Bank PLC. You will also be liable to reimburse us for any legal costs incurred in connection with recovery of any late payment under this agreement.

## 5. ADDITIONAL COSTS

We reserve the right to charge additional costs as follows:-

- (a) for amendments to the Product requested by you which go beyond the initial product specifications agreed at outset of this agreement;
- (b) for any third party liability incurred by us (for which a fee or cancellation fee is payable by us) as a result of changes to the specifications requested by you;
- (c) if you fail to meet approval dates / sign off stages of the production in accordance with our requests and additional costs arise out of such delay. (You acknowledge that changes to the Product may become more complex if you do not formally approve and sign off stages of the production process in accordance with our requests and that failure to do so may result in an increase in the Fee and / or delay in delivery dates);
- (d) if there are delays in supply of source materials, collateral, products, services or personnel organised by you or your representatives and / or problems encountered by us in the functionality or usability of such materials or services resulting in additional costs. (You acknowledge that the Fee, time-line and delivery dates are dependant upon the availability, functionality and usability of such materials and services).
- (e) We shall give you prior written notice of any additional costs and shall not incur such additional costs without your prior approval. Such costs shall be added to the Fee to the final instalment payable unless otherwise agreed by the parties.

## 6. INTELLECTUAL PROPERTY RIGHTS

- (a) All Intellectual Property Rights of whatever nature in material devised by us including any software code written by us and our employees or agents will vest in and belong to us. You agree to do what is reasonably required in order to vest such rights in us or to evidence the same if appropriate.
- (b) We hereby grant an exclusive royalty free licence to you to use the Intellectual Property Rights for non-broadcast, corporate use throughout Europe to a non-paying audience for the full period of protection of such rights and any extensions or renewals thereof. The licence shall take effect on receipt by us of all payments due under this agreement. You acknowledge that we clear the rights in all material only for the use set out above unless otherwise requested by you in writing and agreed by us in writing. We exclude liability for any claims made against you for use of the Product in any way other than that licensed hereunder.
- (c) You hereby grant to us a non exclusive royalty free licence to use all materials supplied by you for the purposes of this agreement.
- (d) You hereby warrant that you have obtained all necessary rights, permissions and licences for the use of all materials supplied by you to us. For the avoidance of doubt this includes all third party or voice-over references.
- (e) You warrant that nothing in any material supplied by you is defamatory or subject to any other legal restriction.
- (f) You undertake to indemnify us fully and defend us at your own expense against all costs and losses whatsoever incurred by us, our employees or agents as a result of any claim made against us or any of them as a direct or indirect breach by you of any part of this clause.

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## 7. CONFIDENTIAL INFORMATION

Neither party to this agreement shall disclose to any third party any confidential business, information or future plans of the other party at any time acquired during the existence of this agreement and no reference is to be made to the terms of this agreement by the parties in any advertising, publicity or promotional material without the prior consent of the other party.

## 8. MORAL RIGHTS / CREDIT

You acknowledge that we assert our moral rights generally in respect of the Product under the Copyright, Designs and Patents Act 1998 and in particular to be credited on the Product in such a manner as the parties will agree. You agree not to make any substantial changes to the Product (whether by editing or otherwise) without our prior written approval.

## 9. PROMOTION

We reserve the right to use the Product for the purposes of our own advertising and you accept that the Product shall form part of our library of works in this respect.

## 10. INSURANCE

- (a) Our budget estimates are subject to an errors and omissions excepted clause.
- (b) Our employees and directly contracted freelancers are covered by our professional liability cover.
- (c) Any goods with significant value that are loaned to us (including in transit) in the course of the production should be detailed in writing. We may wish to increase our insurance cover for such items and as such will re-charge any costs associated with increased insurance costs to you.

## 11. COLLECTION OF MATERIALS

On completion of the job, you agree to arrange for collection of all materials provided by you within thirty (30) days of completion of the job unless agreed otherwise. If these are not collected within thirty (30) days or within the agreed time period, we reserve the right to destroy them on giving you not less than fourteen (14) days prior notice.

## 12. RESTRICTIONS

You undertake that you will not during the period commencing on the date of this agreement and terminating twelve (12) months from delivery of the Product, entice, solicit or engage any person who was an employee or a consultant or otherwise engaged by us during such period and whilst we both consider this restriction to be reasonable we agree that if a court of competent jurisdiction considers that the restriction is invalid but would have been valid if either the period or its scope were reduced then the restriction shall continue to apply but with such restriction(s) necessary to enable its validity.

## 13. MCPS

We are a member of and are bound by the rules of the Mechanical Copyright Protection Society (MCPS) and where appropriate license all music / compositions used with the MCPS.

## 14. DATA PROTECTION ACT

We are registered under the Data Protection Act 1984 and reserve the right to store and collect mechanical and/or electronic data relevant to the Product. You undertake that you will not collect any data from or via the Product without obtaining the appropriate registration under the Data Protection Act 1984 and complying with your obligations under the Data Protection Act.

## 15. INDEMNITY

You undertake to fully indemnify us against all liabilities, claims, demands, actions, costs, damages and losses arising out of any breach by you of any of the terms hereunder. In the event of any claim, dispute, action, writ or summons against you, you agree to provide full details to us at the earliest opportunity and shall not settle any such matter without first consulting us.

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## 16. TERMINATION

- (a) If at any stage you decide not to proceed further with the production of the Product you shall in any event be liable to pay us the cancellation fee quoted in our proposal, together with all sums due under this agreement prior to the cancellation.
- (b) In addition to any other rights and remedies at law, either party may by written notice to the other party terminate this agreement with immediate effect in the following circumstances:
  - (i) where the other party has committed any serious breach of its obligations under this agreement and (if the breach is capable of remedy) has failed to remedy such breach within fourteen (14) working days of receipt of a notice specifying the breach and requiring remedy; or
  - (ii) where the other party goes into voluntary or involuntary liquidation or is declared insolvent either in bankruptcy proceedings or other legal proceedings or has reached an agreement with creditors due to its failure or inability to pay its debts as they fall due, or where a receiver is appointed over the whole or part of its business.
- (c) Without prejudice to sub-clause (a) of this clause and notwithstanding the termination of this agreement for whatever reason, you shall remain liable to pay us all sums due on or prior to the date of termination and all provisions of this agreement expressed to remain in effect after termination shall remain in full force and effect.

## 17. LIABILITY/FORCE MAJEURE

- (a) Subject to sub clause (b) below, our liability for any loss or damage consequential or otherwise and howsoever caused whether in tort (to include without limitation for negligence) or contract or otherwise shall not exceed the amount invoiced by us to you in respect of the agreement.
- (b) We accept no responsibility for and bear no liability for any viruses in the Product discovered subsequent to delivery of the Product to you and acceptance by you.
- (c) If either party is effected by any circumstances beyond the reasonable control of that party ("Force Majeure") it shall forthwith notify the other party of the nature and extent thereof. Neither party shall be liable to the other for delay in performance, or non performance of any of its obligations under this agreement when due to any Force Majeure of which it has notified the other party and the time for performance of that obligation shall be extended accordingly.

## 18. GENERAL

- (a) Neither party shall assign the benefit or burden of this agreement without the prior written consent of the other party.
- (b) No waiver, variation or amendment of this agreement shall be valid unless made in writing and signed by both parties.
- (c) Nothing in this agreement shall be deemed to constitute a partnership between the parties and neither of the parties shall do or suffer to be done anything whereby it may be represented as a partner of the other party.
- (d) You shall execute such deeds and documents and take such steps as may be required to confirm to us any rights granted to us hereunder.
- (e) The UK shall be the place of first publication of any material on the Internet.
- (f) Notices will be deemed to have been served (if delivered by hand) upon delivery or (if sent by first class post) two (2) days after being so sent or (if transmitted by facsimile or by electronic mail) when dispatched.
- (g) Either party may notify a change of address, facsimile or electronic mail to the other party, such notification to be effective five (5) business days after the notification is given.
- (h) This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English Court.