

KOSI PRODUCTIONS LIMITED TERMS AND CONDITIONS OF BUSINESS

1. DEFINITIONS

“**the Company**” means Kosi Productions Ltd.
“**the Client**” means the person firm or company for whom services are to be performed, as specified in the Acceptance of Order Form.

“**the Facilities**” means the services and any equipment provided by the Company to the Client in connection with the Production Services.

“**Production Services**” means the Company’s video production services and associated activities.

“**Acceptance of Order Form**” means the Company’s official acceptance of order form.

“**Booking**” means an order (i.e. an offer) made by the Client pursuant to clause 3 hereof.

“**Accepted Order**” means a Booking accepted by the signature of the Acceptance of Order Form by the Company.

“**Contract Price**” means the total price for the Facilities set forth in the Acceptance of the Order Form and shall be either an agreed fixed rate as mentioned in 2.1.1 below or an agreed daily rate as mentioned in 2.1.2 below (multiplied in the later case by the number of days for which Facilities are actually provided hereunder).

“**Invoice**” means the invoice or invoices sent to the Client at the same time as or subsequent to the Acceptance of Order Form.

“**Premises**” means 11 Bennett Way Stratford upon Avon CV37 7LX or such other place at which the Company may from time to time conduct its business of providing Production Services.

“**Programme**” means the sequence of images based upon the Client’s Material and incorporating filmed and edited material undertaken by the Company which is to be delivered to the Client as part of the Accepted Order

“**Client’s Material**” means any scripts storyboards or other literary or artistic material including but not limited to logos or designs provided to the Company by the Client upon which the relevant Programme is to be based.

“**the Delivery Items**” means the copy master tape, DVD or digital computer file incorporating the Programme which the Company is obliged to deliver to the Client pursuant to the terms of the Accepted Order together with any other delivery items expressly mentioned in the Acceptance of Order form and which are part of the Accepted Order.

“**Client’s Rights**” means the sole and exclusive right and licence to use the Programme and the Delivery Items for the purpose of the Specified Use.

“**the Specified Use**” means the use of the Programme and the Delivery Items specified on the Acceptance of Order form.

“**Company’s Rights**” means:

- (i) the right to include the Programme on the Company’s promotional material
- (iii) subject to (i) above the right to use or authorise the use of the Programme (subject always to 12.2 below) for any use other than the Specified Use
- (iii) the unrestricted right to use and authorise others to use the Company’s Material.

“**Company’s Material**” means all computer programmes so-called “computer models” data sets or other literary artistic or dramatic material either created by or for the Company prior to the Accepted Order or created by or for the company as part of the Facilities provided to the Client in the course of creating the Programme but for the avoidance of doubt excluding the Client’s Material

2. WRITTEN QUOTATION

2.1 Any written price quotation for the Facilities to be provided by the Company to the Client shall consist of either: -

2.1.1 An agreed fixed rate, or

2.1.2 An agreed daily rate provided however that if any estimate is given by the Company as to the number of days for Which the Facilities are likely to be required whereas such estimate is given in good faith it is given on the basis unless otherwise expressly to the contrary herein provided that the said Facilities may in fact be required for a greater or lesser number of days and the Contract Price will vary accordingly

2.2 A written quotation shall be subjected to the Terms and Conditions set out herein and shall stand for 30 (thirty) days from the date of issue after which time it may be Subject to amendment by the Company in its sole discretion.

3. BOOKINGS

3.1 Orders for the use of the Company’s Facilities may be placed either verbally or in writing.

3.2 Orders will become binding on the earlier to occur of either:

- (a) verbal acceptance of the Client’s order by a duly Authorised representative of the Company or the completion and dispatch by the Company to the Client of the Acceptance of Order Form
- (b) Once accepted every Booking shall be a contract between the Company

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and the Client subject to these Terms and Conditions.

4. DEPOSITS

The Company reserves the right to require the Client to make full or part payment prior to the performance of the Booking by the Company. Any such required prepayment shall be specified in the Acceptance of the order Form and shall be made upon receipt of the Company’s Acceptance of Order Form, or at any later date specified in the Acceptance of Order Form. In the event the Client fails to make such prepayment as specified then notwithstanding the provisions of Clause 3.2 the Company shall be entitled at its sole discretion to relegate the Booking to that of provisional status only.

5. CANCELLATION OF CONTRACT

5.1

5.1.2 If the Client gives notice of the cancellation of an Accepted Order the Client will be liable for any expenses incurred by the Company including but not limited to hire of equipment location fees and staff expenses incurred directly with the development of the commissioned programme. The Company will provide a complete account of the afore said expenses.

5.2 For the purposes of this clause 5

(a) The scheduled start time will be the hour at which the Company’s Facilities are agreed to be provided for use in connection with an Accepted Order by a Client

(b) Working days are unless otherwise agreed in advance Monday to Friday inclusive, but excluding any statutory public holidays

5.3 A cancellation by the Client of an Accepted Order can only be

effective if given in writing by the Client.

6. PAYMENT

- 6.1 Subject to the further provisions contained in this clause the Client shall unless otherwise expressly agreed in writing by the Company pay for any services supplied to it in accordance with any quotation or any daily rate give Pursuant to clause 2 hereof together with the Value Added Tax payable thereon.
- 6.2 If at any time during the performance of this agreement the charges of any sub-contractor engaged by the Company with the Client's knowledge and consent to supply any of the services required by the Client shall be increased then the charges payable by the Client hereunder shall be increased by an equivalent amount.
- 6.3 Subject to any provisions to the contrary contained in the Acceptance of Order Form all payments shall be made within 30 days from the date of the applicable Invoice. Monies unpaid after the due date shall bear interest until the day payment is received at the rate of 3% per annum over the Minimum Lending Rate from time to time of the HSBC PLC such interest to run from day to day and to accrue after as well as before any judgment.
- 6.4 Without prejudice to the rights and remedies of the Company generally and for the avoidance of doubt the existence of a query or dispute on any individual item in an Invoice rendered by the Company will not affect the due date for the payment of the balance.

- 6.5 In the case of any applicable payment to be made by the Client time for payment of the same shall be of the essence.

7. EXPENSES

In the event that any officer or employee of the Company is required by the Client to attend at places of premises other than those of the Company then the Client will be responsible for the reasonable costs and expenses thereby incurred by the Company to include overnight stays where necessary.

8. FACILITIES

If any Facilities are required by the Client over and above those agreed in the Acceptance of Order Form the Company shall use all reasonable endeavours to provide such Facilities and shall if able to provide the same quote a price therefore The Company shall not be liable to the Client for failing to provide such additional Facilities unless it has agreed in writing to do so. The provision of any such extra Facilities shall be subject to the same terms and conditions as are herein set out.

9. CLIENT'S EQUIPMENT, PERSONNEL ETC.

Subject to the Company's prior written approval in each case, the Client may bring onto the Premises and use equipment and personnel not described in the Acceptance of Order Form.

10. RETENTION OF TITLE

- 10.1 The Company shall retain the title to and legal and beneficial ownership of any materials referred to in clause 11 until payment in full of all sums due from the Client to the Company pursuant to the Acceptance of Order Form in accordance with the terms and conditions set out herein

- 10.2 In accordance with the provisions of Section 19 of the Sale of Goods Act 1979 the Company reserves the rights of disposal of such materials until they have been paid for in full by the Client. In the event that the Client resells the materials before payment has been made in full to the Company, the Company's interest shall attach to the proceeds of such resale whether received or receivable without prejudice to any further claim the Company may have against the Client.

11. INSURANCE

- 11.1 The Company does not agree to provide any insurance whatsoever with respect to any risks that might arise from the Client's use of the Company's Facilities and with respect to any consequential risks and/or loss that might arise from the Client's use of the Company's Facilities. It shall be the Clients sole responsibility at its own cost and expense to insure against such risks.

12. RIGHTS/DELIVERY

- 12.1 Subject to payment in full by the Client to the Company of the Contract Price the Company shall deliver to the Client the Delivery Items and shall grant to the Client the Client's Rights
- 12.2 The Company and its chosen successors in the title shall be and remain the sole and unencumbered owner of the Company's Rights provided however that the Company shall not permit or authorise and third party to use the Programme for any other than the Specified Use and if the Client shall wish to use the Programme or

the images contained therein for a use other than the Specified Use the Company shall negotiate with the Client in good faith a suitable fee (having regard to prevailing market conditions in the entertainment industry) in return for the payment of which the Client may exploit the said Programme (or images contained therein) by such other use.

13. CLIENT'S WARRANTIES AND INDEMNITY

The Client hereby warrants and represents and agrees undertakes and covenants with the Company:

- 13.1 That the Client shall not cause or permit any damage to the Premises nor to the Facilities nor any other property whatsoever in on or about the Premises and to compensate the Company at current replacement cost for all damages Or loss consequential or otherwise (including loss of use) caused thereto by any damage to or deterioration (fair wear and tear excepted) of the Premises or of the Facilities or of any other property used by the Client or its employees.
- 13.2 That the Client shall not permit any property of whatever nature except property of the Client to be removed from the Premises without the prior written consent of the Company.
- 13.3 That all the equipment and other plant machinery and equipment at the Premises shall be worked operated and manipulated by the personnel employed or engaged by the Company unless the Company otherwise directs or consents in writing and the Client shall not interfere with the same nor with the

Company or such persons obtaining access thereto at all times. Such equipment shall be reasonable directions of the Client but not so as to damage or endanger the same.

13.4 That the Client will not keep or permit to be kept at the Premises any materials of a dangerous or explosive nature or the keeping of which may contravene any statute regulation and/or bye-law or constitute a nuisance to the Company or other third parties.

13.5 That the Client will not leave or permit to be left after the currency of the Agreement any videotape and/or film stock or other materials in the Premises except with the prior written consent of the Company and then only in such place as the Company may specify.

13.6 That the Client will and will procure that all personnel engaged by the Client will observe perform and comply with all rules requirements or regulations by the Company relating to the Premises made in pursuance of any Act of Parliament Order in Council or otherwise howsoever or by any local or other authority or by the Company (including but not limited to those relating to smoking).

13.7 That the Client shall not do or permit not acquiesce in any way to be done at the Premises anything whereby the policy or policies of Insurance effected on the Premises or on any property owned by or in the possession of the Company against loss or damage by fire or other causes may become void or voidable or whereby the rate for premium under such policy or policies may be increased,

13.8 The Company shall unless otherwise agreed also be accorded credit thereon in the form "Produced by Kosi Productions" or words closely similar thereto.

13.9 That nothing is included in any of the Client's Material in breach of any contract or which is in breach of any duty of confidence or which constitutes (or which might if included in the Programme constitute) and infringement of copyright or contempt of court or breach of any statute or which is defamatory of any person.

13.10 That the Client owns on an unencumbered basis all copyright and other rights or has obtained a licence for all copyright and other rights in the Client's Material which Premises or otherwise using any of the Facilities as are necessary to enable the Client to engage the Company for the services to be provided by the Company hereunder and for the Client or any third party to subsequently exploit such Programme without infringement of any third parties' rights. And the Client will fully indemnify the Company in respect of any loss (consequential economic or otherwise) damage and expense arising as a result of any breach or alleged breach of any of the warranties and/or covenants and/or representations and /or undertakings and/or agreements on the part of the Client herein contained.

14. LIABILITY

14.1 Subject to the provisions of Clause 14.2 hereof the Company's liability for any breach of the provisions of

this Agreement or for any act or omission on the part of the Company its employees servants or agents shall be limited to damages of an amount not exceeding in any event the Contract Price save and except in respect of the Company's liability to the client for death or injury resulting from its own or that of its employees' agents' or servants' negligence. The Company shall not be liable to the client in any event in respect of any loss of profits goodwill or any type of special indirect or consequential loss.

14.2 Without prejudice to the generality of any exclusion or limitation of liability the Company shall not be liable for any failure to perform any obligation hereunder or for any circumstance outside the Company's control including but not limited to act of God war riot civil commotion fire flood explosion impact industrial action by any persons (whether or not an employee or the Company) restriction or failure of the Company's normal suppliers to make delivery or otherwise to perform any service required to them.

15. SOLE RESPONSIBILITY

The Client shall be solely responsible to ensure that any videotape or other materials produced pursuant hereto is correct and complete in all respect as regards both form and content before use is made thereof or the same is removed from the Company's Premises (whichever is earlier).

16. TERMINATION

16.1 The Company shall have the right upon notice to terminate its

obligations pursuant to this agreement if one or more of the following events occur:

16.1.1 The Client defaults in its obligations hereunder and does not remedy the same within 7 days of receipt of notice from the Company specifying such default provided that this agreement shall terminate automatically if the breach concerned is one that is incapable of remedy

16.1.2 The Client in the case of an individual commits any act of bankruptcy or in the case of a company makes a composition with its creditors or has a receiver or administrator appointed over its assets or any part thereof or commences winding-up proceedings or goes into liquidation

16.2 The Company shall have such right of termination upon immediate notice to the Client in the event that any execution be levied upon any materials and/or goods brought into the Premises by the Client.

16.3 On the termination for any cause whatsoever of this agreement all sums accrued due to the Company hereunder shall become immediately due and payable to the Company and the Client shall relinquish all possession lien or other hold of any materials and/or goods which it has at that time in its possession power or control.

16.4 Termination pursuant to this clause shall be without prejudice to any claim for any monies due hereunder or for damage for breach of any of the provisions hereof.

17. NOTICES/SPECIAL CONDITIONS

17.1 Any notice or other communication required to be given or made

hereunder shall be in writing and served at the respective address herein stated (or to such address as may be notified hereunder) by prepaid first class post or by email (confirmed by mail as aforesaid sent within twenty four hours of its dispatch) or by personal delivery thereof an shall be deemed to have been given:

- (a) in the case of post within forty eight hours of posting an inland letter and within six days of posting an overseas letter
 - (b) in the case of facsimile transmission or personal delivery immediately upon such transmission or delivery being effected
- 17.2 The Special Conditions (if any) specified in paragraph 6 of the Acceptance of Order form shall be incorporated herein.

18. COMPLETE AGREEMENT/WAIVER

These Terms and Conditions together with the Company's Acceptance of Order Form embody all the terms agreed between the parties with respect to the matters to which the Acceptance of Order Form relates and supersede any previous agreement between the parties with respect to such matters and no oral or other written representations warranties or promises shall be implied or otherwise included as terms of the agreement between the parties except if incorporated into a written instrument made hereafter and signed by a director or other duly authorised representative of both the Client and the Company. The failure or forbearance by any party to insist on any occasion upon the performance of the terms conditions and provisions of the agreement shall not thereby act as a waiver of such breach of acceptance of any variation.

19. NO PARTNERSHIP/VAT

- 19.1 Nothing herein shall be or be deemed to constitute or refer to a partnership or a joint venture between the parties.
- 19.2 All sums mentioned herein or in the Quotation or Acceptance of Order form are exclusive of any Value Added Tax that may be payable thereon

20. SURVIVAL OF PROVISIONS

The Expiration or determination of the agreement howsoever arising shall be without prejudice to any provisions which are to have effect after the date of expiration or determination.

21. CONFIDENTIALITY

The Client warrants that the Clients its servants and/or its agents will not disclose any information concerning the terms of the Acceptance of Order Form and any business information with which it is supplied or of which it acquires knowledge during the use of the Facilities.

22 HEADINGS

The headings to these conditions are for the convenience of reference only and shall have no effect o the construction of the conditions.

23. PROPER LAW

The proper law of this agreement shall be English Law and this agreement shall be construed in accordance with and governed by the laws of England. The parties agree to submit to the Exclusive jurisdiction of the English Courts.