



## STANDARD TERMS AND CONDITIONS

In these conditions Realise Post Limited trading as Realise Studio is referred to as "the Company", which definition shall include its licensees, contractors, and/or assigns, as the context may permit. "The Client" means the person, firm, company or other body placing orders with the Company.

### 1. Applicability of conditions

The Company provides facilities and services only on the basis of these conditions which shall apply to all bookings, however made or accepted, and shall form part of every contract between a Client and the Company, except insofar as otherwise expressly agreed in writing by a director of the Company acting on its behalf.

### 2. Extent of Company's Responsibility

The Company's responsibility is restricted to providing facilities and services for production and post production. In particular, except as may be otherwise agreed in writing by a director of the Company acting on its behalf, the Company's responsibility does not extend to any matter normally falling within the province of a director or producer of any film, television programme, commercial, music video, or other audiovisual project. The Client is responsible for ensuring that any film, video tape or computer programme is correct and complete in all respects as regards both form and content before use is made thereof or the same is removed from the Company's premises (whichever is the earlier).

### 3. Bookings, Cancellations, and Contract Formation

a. Bookings may be made either by telephone or email or by letter or by fax. Every booking shall be subject to these conditions of trading and shall be at rates shown in the Company's estimate issued before or at the time of booking. The Company shall have the absolute right to change its prices at any time without prior notice.

b. If notice of cancellation of a booking is received by the Company less than two working days prior to the scheduled work time, the booking will be charged at full rate. If notice of cancellation is received more than two working days but less than seven days prior to the scheduled start time a charge of 50% of the full rate will be made. If notice of cancellation is received more than seven working days but less than fourteen days prior to the scheduled start time a charge of 25% of the full rate will be made. No charge shall be made for cancellations received fourteen days or more prior to the scheduled start time. For the purpose of this condition the scheduled start time will be the hour at which any equipment or personnel of the Company or its sub contractors is first scheduled for operational use in connection with a booking by a Client. Working days are Monday to Friday inclusive, but excluding any statutory Public Holidays. For the purposes of notification of cancellation a day is twenty-four hours (i.e. to give two days notice of cancellation we require forty-eight hours notice).

c. In addition to any cancellation charge under sub-clause 3.2 above, the Company shall in the event of cancellation (whenever occurring) be entitled to charge the Client for any amounts payable to third parties in connection with the booking.

d. Cancellations of any bookings will only be effective if given in writing or email by the Client.

e. The Company reserves the right to cancel any booking whether or not any services in connection therewith have been provided by the Company in the event that the Company in its absolute discretion considers a Client's material is or might be offensive or obscene or that the copying or other reproduction thereof might infringe the rights of any third party or be otherwise illegal.

- f. Nothing herein shall constitute a penalty and the parties hereby acknowledge and agree that the cancellation charge referred to herein is a fair and proper assessment of the Company's loss.
- g. All goods, services and facilities offered by the Company are subject to these Terms and Conditions, and no servant or agent of the Company has the right to vary these Terms and Conditions verbally or otherwise or to make any warranties and/or representations on behalf of the Company other than as expressly set out herein.
- h. These Terms and Conditions shall be incorporated into any contract between the Company and the Client to the exclusion of any terms of business of the Client. Any dealings with the Company following receipt of a copy of these terms and Conditions or link to the site from which they can be downloaded shall be deemed to be an acceptance by the Client of these Terms and Conditions.
- i. Unless otherwise accepted by the Company in writing, any quotation or estimate issued by the Company shall be an invitation to treat. Any order by the Client following any such estimate or quotation shall be an offer, and a binding contract shall arise between the Company and the Client only upon the Company's clear and unconditional acceptance of the Client's order.

#### **4. Payment**

- a. Subject to the further provisions contained in this condition the Client shall unless otherwise expressly agreed in writing by the Company pay for the facilities and services supplied to them at the rates shown in the relevant estimate.
- b. All the payments shall be made within twenty-eight days from the date of the invoice. The Company reserves the right to require any Client to make full or part payment prior to the performance of the booking by the Company.
- c. In the event of default in payment by the Client 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 Client without notice.
- d. In the event of late payment (or non payment) the Company is entitled at its sole discretion to charge interest on any amount outstanding at the rate of 4% above the base rate of Barclays Bank plc from time to time from the due date of payment.
- e. The Client agrees to pay for any additional services supplied by the Company which are not described in the estimate at the price listed for such services in the Company's rate card and where no such price exists at cost plus 25%.
- f. Unless the client has established a valid credit facility with the Company, no deliverables, masters or rights in any project shall be released without the prior settlement of any outstanding payment.
- g. All fees will be subject to VAT at the applicable rate which will be added to any request for payment.

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

- a. 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 by the Company. 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 Client. Alteration by the Client of its requirements may result in delay in performance, delivery and/or availability for collection for which the Company shall bear no liability.
- b. 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 agreement or as otherwise agreed. If the Client (or the intended recipient) fails to take delivery on the agreed 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 dispatch the Company shall be entitled to store the goods and to charge the Client the reasonable cost of doing

so, and to tender its account for such charges to the Client, provided that in no event shall the Company be under any liability in respect of any loss or damage following the dispatch of any goods from the Company's premises.

- c. If the Client and the Company agree that any goods shall be delivered electronically or via any form of telephony (this constituting in each case a "**Direct Delivery**"), the following provisions shall apply, as relevant:
  - i. The Client acknowledges that Direct Delivery is not or may not be a completely secure medium of communication and that a 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
  - ii. The Company shall have no liability to the Client or any third party for:
    - 1. Any delay to any Direct Delivery or any non-receipt of goods delivered by Direct Delivery;
    - 2. Any loss or damage resulting from any person gaining unauthorised access to any Direct Delivery of any goods;
    - 3. 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
    - 4. 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.

## 6. Limitation of Liability

- a. The Company shall not be liable for any loss or damage to any property of the Client while held at the Company's premises, including (without limitation) any rushes and any kind of footage, whether supplied on hard drive, film or tape, howsoever arising, unless caused by the negligence or breach of duty of the Company or its employees, agents or sub-contractors in which event the provisions of paragraph 5.f below will apply.
- b. All implied conditions and warranties, statutory or otherwise are hereby excluded.
- c. The Company shall not be liable in any circumstances for any loss of profit or other consequential loss suffered by the Client arising from work undertaken by the Company.
- d. The Client shall at times be liable to the Company and to those claiming through the Company for: -
  - i. Any injury to or death of any of the Company's employees; and
  - ii. any loss, damage or personal injury of any kind suffered by any third party, where such loss, damage or injury is occasioned by or arises out of any act or omission of the Company or its employees agents or sub-contractors as a result of carrying out the instructions of the Client, whether or not such injury, death, loss or damage arises as a result of any negligence on the part of the Company or its employees, agents or sub-contractors.

The Client shall indemnify the Company against all claims, proceedings, actions and costs in respect of such loss, damage or injury howsoever occasioned at any location whatever.

- e. If the Company is unable to provide any of the services, facilities or goods agreed to be provided by the Company to the Client due to circumstances beyond its control (including but not limited to industrial action by any person or persons whether or not employees of the Company) the Company shall not be liable for any loss suffered or any sum payable by the Client as a result thereof. In the event of a breakdown or stoppage or defective working of any equipment hired to the Client or used as part of the services provided to the Client then the Company will use its reasonable endeavours to remedy the same without delay. In respect of any period during which

the Client is thereby prevented from making use of the facilities or services supplied to him the Client shall be entitled to a proportionate remission of the charges payable in respect of such facilities or, at the option of the Company, shall supply the equipment, without additional charge, for a period of time equivalent to that during that which the Client shall have been prevented from using the equipment. Save as aforesaid the Company shall be under no liability whatever in respect of such breakdown or stoppage or defective working or other failure to perform its obligations.

f. No employee of the Company is entitled to make representations on behalf of the Company and the Client shall be entitled to rely only on representations made in writing by a director of a Company on its behalf.

g. In the event of any loss or damage to any property of the Client being occasioned by the negligence or breach of duty of the Company, its employees, agents or sub-contractors the liability of the Company under this Agreement or in law shall be limited to the Post Fee in aggregate.

#### **7. Indemnities by Client**

The Client shall fully indemnify the Company or (where relevant) its sub-contractors, agents or employees from and against all actions, proceedings, claims, demands, damages, fees, costs, losses and expenses or other liabilities made against or incurred or suffered by the Company or its sub-contractors, agents or employees by reason of or in respect of:

a. any infringement of copyright or trademark or any passing off or any other infringement of or interference with any proprietary right or interest of any third party or any civil or criminal action or prosecution for defamation or obscenity or for any breach of confidence or misuse of any confidential information arising out of any work carried out by or on behalf of the Client.

b. Any breach by the Client of any of these conditions.

c. any personal injury or death or loss or damage to property caused by or arising out of or in connection with the use by the Client of any facilities provided by the Company except where the same is attributable to the negligence or breach of contract of the Company or its servants, agents or sub-contractors.

d. any breach by the Company, its sub-contractors, agents or employees of its or their obligations under any contract with the Client or any negligent act or omission of the Company its sub-contractors, agents or employees resulting in loss, damage or injury to the Client, its agents, sub-contractors or employees, or in any costs or expenses payable by the Client, its agents, sub-contractors or employees.

#### **8. Insurance**

For the avoidance of doubt, the Client agrees and acknowledges that the Company is not providing to the Client the benefit any insurance, beyond any specifically required by law, with respect to any risks that might arise out of or as a result of the use by the Client of the Company's facilities or services and any consequential risks that might rise from it.

#### **9. Relationships**

The Client agrees not make an approach to any Company sub-contractors, agents or employees with a view to contracting with the sub-contractors, agents or employees of the Company directly to work independently of the Company.

#### **10. Screen Credits**

For any material where screen credits are incorporated, credit must be given to The Company and relevant staff or as otherwise agreed.

#### **11. Retention of Title**

The Company shall retain title to and legal and beneficial ownership of any film, video tape and/or computer programme and/or other deliverable (the "Deliverables") produced by it until all fees relating to the Company have been paid in full. The Company reserves the right to demand payment in full when any such film, video tape or computer programme is removed

by the Client from the Company's premises. If the Company is owed any amount which has been outstanding for 365 days or more the Company shall be entitled to seek to sell its interests in any Deliverables as granted by this clause to any party in order to recover its outstanding debts from the Client. After deducting all costs and other amounts due to the Company, any amount remaining from any such sale shall be repaid as soon as practically possible to the Client.

## **12. General**

- a. The Client shall observe the provisions and requirements of all applicable trade union agreements and shall indemnify the Company against any costs, expenses and/or loss incurred by it as a result of any failure by the Client to do so.
- b. Headings used in this agreement are purely for ease of reference and do not form any part of or affect the interpretation of this agreement.
- c. If any provision of this agreement shall be adjudicated by a court to void or unenforceable, the same shall in no way affect any other provision of this agreement or the validity or enforceability of this agreement, and the other provisions of this agreement shall remain valid and binding between the parties.
- d. This agreement contains the entire agreement between the Company and the Client with respect to its subject matter, and supersedes all previous agreements and understandings between the Company and the Client, and it may not be modified except by another instrument in writing duly signed by the authorised representatives of both parties.
- e. The parties agree and confirm that it is not their intention that any third party be entitled to enforce any term of this agreement which may confer a benefit upon that third party, whether such entitlement would, but for this Clause 12(e), arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- f. Unless otherwise notified to the Company in writing, the Client shall allow the Company to use any and all finished projects for its own PR and marketing purposes after the date of first transmission to the public in any media.

## **13. Law**

This agreement shall be interpreted in accordance with the laws of England and the parties agree to the jurisdiction of the English Court.