

Fifty Fifty

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FIFTY FIFTY POST PRODUCTION LTD – TERMS AND CONDITIONS

1. DEFINITIONS

Account Customer: an entity that has applied to the Company to become an Account Customer before placing a request for Services and whose application for such has been approved by the Company.

Company: Fifty Fifty Post Production Limited.

Customer: Any person, company, corporation or other entity from whom a request for Services is accepted by the Company.

This Agreement: these terms and conditions together with the Order once agreed between the Company and the Customer.

Services: Any digital file processing, file/video-recording, file/video-playing, editing, titling, transferring, copying, grading, audio mixing, compositing, animation, authoring or other services carried out by the Company for the Customer and/or provision of relevant facilities by the Company at the Company's offices or as arranged by the Company for the Customer as listed in the Order and as provided in accordance with this Agreement.

Order: the Order schedule or other e-mail correspondence to/in which these terms and conditions are attached/referred, setting out the commercial terms agreed between the Company and the Customer for the Services.

Rate Card: the Company's current rate card of prices for the Services at the time this Agreement is concluded.

Customer Materials: All drives, files, videotapes, cassettes, artwork, or other materials of any nature provided by the Customer to the Company in connection with the Services.

2. APPLICATION OF TERMS AND CONDITIONS

These terms and conditions when read together with the Order (which is hereby incorporated into these terms and conditions) sets out the agreement between the Company and the Customer in relation to the Services and shall not be modified, qualified or amended in any way unless specifically agreed by the Company in writing. In the event of conflict between these terms and conditions and the Order, then in respect only of such conflicting items, the matters on the Order shall take precedence.

3. ORDERS AND COMPANY'S FACILITIES

(a) All requests for the Services submitted to the Company are subject to the Company's acceptance which shall be confirmed by the Company returning a countersigned copy of the Order to the Customer or e-mail reply indicating such acceptance. The supply to any Customer of the Services is completely at the Customer's risk and the Company shall have no liability to the Customer or any other person for any economic loss (including loss of profit or goodwill), or any direct, indirect or consequential loss or damage arising from any defect in the Services or any equipment or tapes used in relation thereto.

(b) Where requested on the Order and agreed as part of this Agreement the Company shall make available its facilities, equipment and the personnel that it deems necessary to operate such equipment for the Services, but the Customer shall satisfy itself that such facilities are suitable for its purpose. The Company agrees to use all reasonable endeavours to ensure that all such facilities and equipment perform in accordance with the specification for such facilities and equipment and that such personnel can operate such equipment but unless expressly agreed otherwise in writing at the time this Agreement is concluded the Company shall not be responsible for ensuring that its facilities and equipment are suitable for the Customer's purpose.

(c) The Company shall have no liability in respect of any reduction in the quality of the Services that may be caused by either the quality of the Customer Materials or by reason of the Company following the instructions of the Customer.

(d) All warranties, conditions, terms and representations relating to the Services or items supplied by the Company (whether expressly or implied by statute, common law, use or otherwise) are hereby specifically excluded, but nothing in this Agreement shall limit any liability on the Company's part by reason of death or bodily injury caused by the Company's negligence.

4. CANCELLATION AND TERMINATION

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(a) If the Customer cancels a request for the Services after acceptance by the Company, the Company reserves the right, without prejudice to any other rights of actions against the Customer that the Company may have, to charge the Customer for any and all expenses and/or costs incurred by the Company before receipt of such cancellation, in line with the amounts listed on the Order/Rate Card. Such amount(s) will be payable within 7 days of the date of invoice and pending receipt of such amounts in full the Company may retain any Customer Materials.

(b) If the Customer Materials do not meet at least the technical standards required by the Company to enable the Company to carry out the Services (as may have been indicated by the Company on the Order), the Company reserves the right to give notice to the Customer to cancel this Agreement with immediate effect, and to charge the Customer for any expenses and costs incurred by the Company before such cancellation, such amount being payable within 7 days of the date of such invoice. Any Customer Materials supplied to the Company may be retained until such payment is made in full.

(c) If the Customer becomes insolvent, or commits an act of bankruptcy, or makes an assignment for the benefit of its creditors, or an order be made or an effective resolution shall be passed for its winding-up (except for the purpose of re-organisation or amalgamation without insolvency), or a receiver shall be appointed of the Customer's interest under this Agreement and such receiver shall not be discharged within 21 (twenty one) days of his appointment, or the Customer shall cease or threaten to cease to carry on business, or the Customer is in breach of this Agreement and has not cured such breach (if capable of cure) within 5 (five) days of notice of such breach, without prejudice to its other remedies, the Company may give written notice with immediate effect to the Customer to terminate this Agreement and thereafter will be discharged from performing the Services. Any such termination is without prejudice to all the accrued rights of either party at the time of such termination.

5. RATES

(a) Charges for the Services will be those stated in the Rate Card unless agreed otherwise in the Order. If the Customer requests changes to the Services after concluding this Agreement, the Company reserves the right to decline to carry out the altered Services and/or alter the fees charged. The Company reserves the right to alter the Rate Card on giving at least 48 hours notice to the Customer of such alteration and if no objection is raised by the Customer within a further 24 hours after such notification such altered rates shall be deemed agreed.

(b) Charges listed on the Rate Card do not include Value Added Tax, any media stock, any courier/delivery charges, currency fluctuations, or long distance telecommunications expenses or any other additional costs incurred by the Company which shall be payable by the Customer in addition

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to the amounts listed on the Rate Card for the Services. Where possible the Company shall endeavour to give notice in advance to the Customer of the amount of such additional charges.

(c) If any of the Customer Materials require additional preparation by the Company before the Services can be carried out, the Company reserves the right to make a further reasonable charge covering all materials, preparation and labour involved and the Company shall wherever possible notify the Customer in advance of the amount of such charges.

(d) All estimates of charges given in writing will apply for orders placed within 14 days of the date of such estimate, unless such estimate has been withdrawn by the Company before receipt of confirmation of such order. All estimates given by the Company are subject to any special conditions specified with such estimate.

(e) Unless agreed otherwise in writing, time shall not be of the essence for provision of the Services and while the Company will use all reasonable endeavours to comply with requested delivery dates they cannot be guaranteed by the Company. If the Customer requests an alteration to the Services agreed and/or fails to provide requisite information and/or required materials in a timely fashion to enable due performance of the Services, the Company will not be bound by any original estimates for Services given prior to such alteration or failure to provide requisite information or materials in a timely fashion, or other circumstances outside the Company's control and the Company will not be liable for any failure to honour such estimates. The Company will not be responsible for any costs, charges or expenses incurred by the Customer as a result of such failure.

6. PAYMENT

(a) For all Customers other than Account Customers payment of all sums due shall be made in full on completion of the Services and in any event within 3 days of presentation of the Company's invoice for the Services unless otherwise stated herein or previously agreed on behalf of the Company in writing.

(b) For Account Customers, subject to any contrary indication on the Order, payment of all sums due shall be made in full within 28 days of the date of the Company's invoice.

(c) In the event of any payment due remaining outstanding for more than 21 days after becoming due, the Company reserves the right to charge interest on the outstanding balance for as long as it remains outstanding at the rate of 3% per month.

(d) Notwithstanding any contrary provisions herein the Company reserves the right to require payment of any fees and charges, in full or in part, in advance of, or in installments during, the performance of the Services which shall be recorded in the Order.

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(e) Any queries on the Company's invoice must be raised within 3 days of the date of the invoice otherwise it shall be taken as having been accepted by the Customer.

7. DELIVERY

(a) The Company shall be entitled to be reimbursed by the Customer with any costs of delivery of items/goods to the Customer which the Company arranges. Where possible such amounts shall be notified to the Customer in advance.

(b) If the Company arranges for delivery of any items/goods to the Customer, the risk in such items/goods shall pass on delivery at the Customer's premises or to his order subject to (c) below. Where collected by or on behalf of the Customer, the risk passes once such items/goods are collected.

(c) The property in any items/goods supplied to the Customer shall pass only when full payment for the items/goods has been made and until such time the Company retains full ownership of such items/goods.

(d) If the Customer fails to make payment within 28 days of such monies becoming due, the Company at its discretion shall be entitled to dispose of items/goods prepared for the Customer and apply any proceeds towards the monies due and any expenses in respect of such disposal and shall, upon accounting to the Customer for the balance (if any) remaining, be discharged from all liability in respect of any such property.

(e) Unless contrary arrangements are agreed between the parties hereto the Company will endeavour to deliver any Customer Materials back to the Customer as soon as practicable after receipt of all sums due to the Company from the Customer but the Company shall not be responsible for any loss suffered by the Customer due to delay in such delivery unless such loss shall have been caused by the gross negligence of the Company.

8. CUSTOMER MATERIAL

a) The Customer is advised to insure all Customer Materials fully against all risks including loss or damage or any possible consequential loss; such losses and cover are not provided by the Company and to the fullest extent permitted by law, subject only as set out below in this clause 8, the Company accepts no liability for any damage to or loss of any Customer Materials which may be in the Company's possession. The Customer supplies any master footage and all original materials to the Company at its own risk. The Customer is advised to take all necessary steps to duplicate copies of any original material including without limitation all rushes and/or master footage before supplying the same to the Company.

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(b) The Company shall use all reasonable care in processing, treating, handling and storing of the Customer Materials. However, the Company points out that its charges are not proportionate to the value of the materials which are entrusted to it, or the total sums of money involved in the work on which its Customers are engaged; therefore the Company shall not incur any liability to the Customer (except as mentioned below) in the event of any loss, damage, delay, or expense resulting from error, neglect or omission on the part of the Company. The liability of the Company for any loss or damage, however caused, is limited to the replacement of the relevant materials by similar, but unexposed/blank or unused materials or in the Company's sole discretion payment or repayment (as appropriate) of all sums paid to the Company by the Customer or to be paid under this Agreement in respect of the Services in question.

(c) On completion of the Services the Customer shall, if required, remove the Customer Materials from the Company's premises within a period of one (1) month. If a Customer fails to do so, the Company shall be entitled to return them to the Customer at the Customer's expense and risk or after three (3) months after completion of the Services to erase, dispose and/or destroy all such Materials as the Company shall decide. While such Materials remain in the Company's possession, after the said period of 3 (three) months, they are completely at the Customer's risk as stated above and the Company shall have no liability for them.

(d) In the event of any loss or damage to the Customer Materials caused solely by the Company's negligence while the Services are being provided, the Company's liability is limited to the amount of fees paid or payable by the Customer to the Company subject to a maximum amount of five thousand pounds (£5,000) for each completed Order.

9. LIEN

The Company shall have a general lien on the Customer Materials in its possession for the full balance of monies due from time to time by the Customer to the Company and may retain such Materials until any outstanding balance of moneys due has been paid in full.

10. CUSTOMER'S LIABILITY AND INDEMNITY

(a) The Customer shall be liable for any personal injury, loss, damage, costs and/or expenses suffered or incurred by the Company, its servants, agents, and/or sub-contractors, which are caused by the Customer Materials and/or by the Customer, its servants, agents or sub-contractors while on the Company's premises. All such personnel, while present on the Company's premises, shall abide by all relevant rules and operating practises applicable to the Company's premises, as shall be advised to such personnel by the Company from time to time.

(b) The Customer shall indemnify the Company its directors, and employees, servants, sub-contractors and agents fully against all liabilities, losses, claims, proceedings, judgements, damages, costs and expenses of any nature whatsoever (including, without limitation, reasonable legal fees, costs and expenses) arising directly or indirectly out of the Company's provision of the Services hereunder or in connection with the Customer Materials or the acts or omissions of the Customer, its servants, agents or representatives, or any breach by the Customer of any of its representations, warranties other obligations in these terms and conditions (including, but not limited to, claims by any third party for breach of copyright or defamation relating to any materials or Customer Materials or any failure by the Customer to observe the provisions and requirements of any applicable agreements).

11. QUALITY OF WORK

(a) The ability of the Company to provide the Services and the quality of the Services is substantially dependent on the quality of the Customer Materials. The Company shall endeavour to achieve the highest possible standards of work subject to the quality of the Customer Material available, but it does not guarantee to produce work to any particular standard.

(b) If the Customer makes a complaint in writing within 10 days of the respective Services being completed and in the reasonable opinion of the Company there is a defect in such output which is not attributable to any of the following:

- (i) defects in or unsuitability of the Customer Materials;
- (ii) the normal loss of quality arising out of any processing work; or
- (iii) damage in transit,

the Company will repair or replace at its own expense any defective materials supplied by the Company and if deemed necessary by the Company, will provide the Services once more only in accordance with the terms of the original Order at no additional charge.

(c) Where the Services consist primarily of editing, grading, animation or compositing work by the Company, it is the Customer's responsibility to approve in writing the final delivery of the product of the Services. Following actual delivery, if no reasonable objections are raised in writing by the Customer with the Company within [5] days of such delivery taking place, the Customer will be deemed to have accepted the relevant product of the Services. The Company reserves the right to make additional charges to the Customer if further changes are required to the product of the Services following approval from the Customer.

12. SUB-CONTRACTS

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The Company reserves the right to sub-contract all or any of its obligations to provide the Services unless agreed otherwise.

13. DELAY OR INABILITY BY REASON OF FORCE MAJEURE

The Company shall be entitled to cancel this Agreement on giving notice to the Customer if it is prevented for a continuous period in excess of 7 (seven) days from performing its obligations hereunder and providing the Services due to a strike, other industrial action, or other cause outside the reasonable control of the Company. In such circumstances (where applicable) the Company shall use reasonable endeavours to return the Customer Materials to the Customer but the Company shall have no liability to pay damages or other compensation to the Customer either for its inability to provide the Services (including without limitation any delay, curtailment or cancellation of the use of the Company's facilities) or any loss of Customer Materials.

14. COPYRIGHT AND DEFAMATION

(a) Orders are accepted on the express condition that copyright in the Customer Materials is held by the Customer and/or that the Customer has obtained all necessary copyright and other clearances from the copyright and other rights owners and that the Customer Materials are not defamatory or in breach of any other third party's rights. The Customer shall fully indemnify the Company against any loss, damage, costs and/or expenses suffered or incurred by the Company as a result of any breach of this condition, whether a claim for infringement of copyright, defamation or otherwise in respect of any of the Customer Materials.

(b) If the Company in providing the Services incorporates any original material owned by or licensed to the Company in the Customer Materials, the Customer is hereby granted a royalty-free, worldwide licence, in perpetuity, to use such material as part of the output of the provision of the Services but such material may not be used alone or extracted from the Customer Material as delivered back to the Customer. The Company expressly reserves all of its rights in such material save to the extent of such licence and is hereby given first option on terms to be negotiated in good faith over any [alteration to such Customer Material after delivery back to the Customer, including without limitation any re-versioning, subtitling, re-purposing, re-editing or other changes to the Customer Material which the Company usually provides as part of the Services].

15. CREDIT AND PROMOTIONAL USE

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The Company shall be entitled to an appropriate on screen credit for providing the Services in a form to be approved in advance by the Company. The Company is further hereby granted permission in perpetuity, worldwide and royalty-free to use all or any part of the product of the Services and the Customer's name solely for general promotion and/or advertising purposes for the Company and the Company's business.

16. GOVERNING LAW

These terms and conditions shall be governed by and interpreted in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales for any disputes that may arise hereunder.

17. MISCELLANEOUS

(a) Any failure by the Company to enforce these terms and conditions shall not amount to a waiver of its right to do so or acceptance of the Customer's conduct which gives rise to the Company's rights as aforesaid.

(b) These terms and conditions do not operate to create an agency, joint venture or partnership between the parties hereto.

(c) This Agreement is between the parties hereto and nothing in this Agreement shall create or confer any rights or other benefits on or in favour of any person who is not a party to this Agreement whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

(d) All notices required to be given hereunder shall be sent by e-mail to a current e-mail address of the party to receive such notice and provided the party sending such e-mail does not receive a failure of delivery notice within 3 hours of sending such e-mail, shall be deemed served on the day of sending if sent between 9am and 5pm (UK time) on a weekday, otherwise such notice shall be deemed served on the subsequent weekday. All notices hereunder shall also be sent in hard copy by registered post to the address of the party to be served as set out on the Order and shall be deemed served within 3 days of posting thereof.
