

# Fifty Fifty

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## FIFTY FIFTY POST PRODUCTION LTD – TERMS AND CONDITIONS

**These terms and conditions apply to the supply of Services from Fifty Fifty Post Production Limited (the “Company”) to Customers and, along with the Order, form the Agreement between Customer and the Company. Please read these terms and conditions carefully as on Company’s acceptance of an Order for Services, they will be binding on Customer.**

**Company may update these terms and conditions at any time. The date of last amendment is set out above.**

### **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.

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

**Company:** Fifty Fifty Post Production Limited.

**Company Know How:** includes but is not limited to the proprietary computer programs and proprietary design, artwork, text, music and audio developed by the Company or a third party developing the Services on behalf of the Company prior to this Agreement;

**Company Materials:** means all materials, equipment and tools, drawings, specifications and data supplied by the Company or the Company’s People for and on behalf of the Company.

**Confidential Information:** as defined in clause 8.

**Customer:** Any person, company, corporation or other entity from whom an Order is accepted by the Company.

**Customer Equipment:** means any equipment brought onto the Company’s premises by the Customer or the Customer’s People.

**Customer Materials:** means materials supplied by the Customer or the Customer’s People.

**Deliverables:** all documents, products and materials, in any electronic or physical form, developed by the Company or its People in relation to the Services in any form, including, without limitation, disc media (i.e. DVDs, CDs, Blu Ray), videotape media and digital media (video and audio files).

**Hire Fees:** the cost of the hire of Company’s facilities as set out in the Order.

**Hire Period:** the duration of the hire of Company’s facilities as set out in the Order.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including Company Know-How), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be

granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**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 hire/ provision of relevant facilities by the Company at the Company's offices or as arranged by the Company for the Customer as specifically described in the Order and as provided in accordance with this Agreement.

**Order:** the quotation details and/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.

**People:** means that party's personnel; agents; subcontractors and/ or contractors.

**Rate Card:** Company's current rate card of prices for the Services at the time this Agreement is concluded, as provided to the Customer on request.

## 2. USE OF COMPANY'S FACILITIES AND SERVICES

- (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.
- (b) Where requested in the Order and agreed by the Company, Company shall make available its facilities, equipment and the People that it deems necessary to operate such equipment for the Services for the Hire Period, 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 or are compatible with Customer's Equipment.
- (c) Customer shall only permit People directly involved in the Customer's project to enter the Company's premises. The Company reserves the right to require any person not involved to leave the premises.
- (d) **The Hire Fee shall not in any event be reduced or refunded on account of: (i) the Customer's failure to use the Company's facilities for the full Hire Period; or (ii) Customer cancellations in whole or in part notified later than 48 hours before the start of the Hire Period.**
- (e) The Customer hereby warrants, undertakes and agrees that it shall procure that each of the Customer's People shall abide by the Company's rules, regulations and health and safety policy and that Customer shall be responsible: (i) for the actions and/or omissions of the Customer's People; (ii) for any and all injury, loss or damage to any Company Materials, equipment or premises caused by any act or omission of the Customer's People, or as a result of any defect in or inappropriate specification of the Customer's Equipment or the Customer Materials; (iii) for the cost of the hire of any Customer's equipment; (iv) for any costs and expenses incurred by the Company on behalf of the Customer at the Customer's request; and (v) for any and all loss or damage to the Customer's Equipment, which shall be at the sole risk of the Customer.
- (f) The Customer shall vacate the Company's facilities and remove all of Customer's Equipment promptly at the end of the Hire Period, otherwise Company may dispose of Customer's Equipment in accordance with clause 6 (e).
- (g) The Customer hereby acknowledges that it must comply with all relevant legislation aimed to protect persons from exposure to high levels of noise (in particular The Control of Noise at Work Regulations 2005) as prolonged exposure to high noise levels above 85 dB(A) may cause damage to hearing and that accordingly: (i) the Customer shall be responsible for noise levels within the facilities and shall keep exposures as low as reasonably practicable; (ii) high noise levels shall not be sustained for long periods; and (iii) the Company hereby reserves the right to take such action as it may deem appropriate to maintain tolerable noise levels and that no claim shall lie against the Company in respect of inconvenience or time lost in the event of such action.

- (h) In the event of a failure, breakdown or unavailability for any reason of the facilities which prevents the Customer's use thereof as contemplated under the Order ("**Studio Breakdown**"), the Company shall, at its option, either replace (as soon as can reasonably be arranged) the facilities to which the Customer was entitled by the terms of the Order and which have been lost as a result of such Studio Breakdown or credit or refund to the Customer the applicable portion of the Hire Fee and shall have no liability or obligation to the Customer beyond these remedies.

### **3. RATES**

- (a) Charges for the Services will be those stated in the Rate Card shared with the Customer unless agreed otherwise in the Order in writing in advance. 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. Unless Customer is contracting with the Company as a consumer (as defined in the Consumer Rights Act 2015), the Company reserves the right to alter the Rate Card on giving at least 4 days' notice to the Customer of such alteration and if no objection is raised by the Customer within 4 days' 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 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 and/ or the Customer Equipment requires 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 to Orders placed within 14 days of the date of such estimate, unless such estimate has been withdrawn by the Company before receipt of such confirmation. All estimates given by the Company are subject to any special conditions specified with the estimate.
- (e) Except as set out in sub-section (f) and (g) below, 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.
- (f) Time is of the essence for the provision by Customer of Customer Materials to Company. If the Customer fails to provide the requisite information and/or Customer Materials in a timely fashion to enable due performance of the Services in accordance with the Customer's required timeframe ("Customer Delay"), the Company may choose to either: (i) terminate the Agreement; or (ii) specify a new completion date ("New Date") for the Services which is proportionate to the Customer Delay. The New Date may not be unreasonably rejected by the Customer.**
- (g) If the Customer does reject the New Date, and Company nevertheless chooses to continue with the Services; or where Company terminates under clause 3 (f) (i) above, Customer will be liable to pay Company the full Order price, even where the Order is not completed in accordance with the original Order timeframe because of the Customer Delay.**

### **4. PAYMENT**

- (a) For all Customers other than Account Customers, payment of all sums due shall be made in full in advance 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 30 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 5% over the Bank of England base rate per month.
- (d) Any queries on the Company's invoice must be raised within 5 days of the date of the invoice otherwise the invoice shall be taken as having been accepted by the Customer.
- (e) The Customer shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- (f) If the Customer fails to make payment within 21 days of such monies becoming due, the Company at its discretion shall be entitled to dispose of Deliverables 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.

## 5. DELIVERY

- (a) The Company shall be entitled to be reimbursed by the Customer for any costs of delivery of any Deliverables, Customer Materials, Customer Equipment or other items to the Customer which the Company arranges. Where possible such amounts shall be notified to the Customer in advance.
- (b) Subject to clause 17(c) below, if the Company arranges for delivery of any Deliverables, Customer Materials, Customer Equipment or other items to the Customer, the risk shall pass on delivery to the Company's chosen postal service.
- (c) Unless other arrangements are agreed between the parties in writing, the Company will use reasonable endeavours to deliver any Customer Materials and/ or Customer Equipment 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 or a failure to deliver unless such loss shall have been caused by the gross negligence of the Company.

## 6. CUSTOMER MATERIALS

- (a) **The Customer is advised to insure all Customer Materials and/ or Customer Equipment 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 clause 9, the Company accepts no liability for any damage to or loss of any Customer Materials and/ or Customer Equipment which may be in the Company's possession. The Customer supplies any Customer Materials and/or Customer Equipment including without limitation 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 Customer Material including without limitation all rushes and/or master footage before supplying the same to the Company.**
- (b) The Company shall use all reasonable care in processing, treating, handling and storing of the Customer Materials and/ or Customer Equipment. **However, the Company points out that its charges are not proportionate to the value of the Customer Materials which are entrusted to it, or the total sums of money involved in the work in which its Customers are engaged; therefore, except as stated herein, the total 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) The Company shall have no liability in respect of: (i) any reduction in the quality of the Services that may be caused by the Customer Materials or the Customer Equipment or by reason of the Company following the instructions of the Customer; (ii) the technical quality of any Customer Materials recorded or engineered by Customer's own People; or (iii) any problem or damage

caused to the Company premises or to the Customer Materials or Customer Equipment by virtue of the use of Customer Materials or the Customer Equipment.

- (d) 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 indicated by the Company on the Order), the Company reserves the right to give immediate written notice to the Customer to terminate this Agreement, 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 Company's invoice for the same. Any Customer Materials supplied to the Company may be retained by Company until the invoice is paid in full.
- (e) The Customer shall ensure removal of its Customer Materials and Customer Equipment from the Company's premises within a period of seven (7) days from completion of the Services. If Customer fails to do so, the Company shall be entitled, at Company's election to return Customer Materials and/ or Customer Equipment to the Customer at the Customer's expense and risk; or on written notice of not less than seven (7) days, to erase, dispose and/or destroy all such Customer Materials and/ or Customer Equipment.. If such Customer Materials and/ or Customer Equipment remain in the Company's possession, after the said period of seven (7) days, they are completely at the Customer's risk as stated above and the Company shall have no liability for them.

## 7. LIEN

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

## 8. CONFIDENTIALITY AND THE COMPANY'S PROPERTY

- (a) A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how (including Company Know-How), specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party or its People ("**Disclosing Party**"), and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("**Confidential Information**"). The Receiving Party shall only disclose such Confidential Information to those of its People who need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such People comply with the obligations set out in this clause as though they were a party to this Agreement. The Receiving Party may also disclose such of the Disclosing Party's Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 8 shall survive termination of this Agreement for a period of three years.
- (b) The Customer shall not use the Company's Confidential Information for any purpose other than to perform its obligations under this Agreement. All Company Materials shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

## 9. LIMITATION OF LIABILITY

- (a) Nothing in this Agreement shall limit or exclude the Company's liability for: (i) death or personal injury caused by its negligence, or the negligence of its People; (ii) fraud or fraudulent misrepresentation; or (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- (b) the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Agreement; and

- (c) the Company's total liability to the Customer in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the charges payable for the Services or £5,000 (whichever is less).
- (d) The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- (e) This clause 9 shall survive termination of this Agreement.

## **10. DATA PROTECTION**

The Customer acknowledges and agrees that if Customer applies for a Customer Account, details of the Customer's name, address and payment record may be submitted to a credit reference agency. Customer's personal data will be processed by and on behalf of the Company to the extent required to provide the Services. Customer can read more about the Company's processing of persona data in the Company's Privacy Policy.

## **11. TERMINATION**

Without prejudice to the other remedies or rights that the Company may have, the Company may immediately terminate this Agreement, at any time, on written notice to the Customer: (i) if the Customer is in breach of its obligations under this Agreement and, if the breach is capable of remedy, the breach is not remedied with 7 days of the Customer receiving notice which specifies the breach and requiring the breach to be remedied; or (ii) if the Customer becomes insolvent or if an order is made or a resolution is passed for the winding up of the Customer (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Customer's assets or business, or if the Customer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

## **12. CONSEQUENCES OF TERMINATION**

- (a) On termination or expiry of this Agreement: (i) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; (ii) the Customer shall return all of the Company's equipment, Company Materials and Deliverables. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and (iii) the clauses which expressly or by implication survive termination shall continue in full force and effect.
- (b) Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **13. CUSTOMER'S LIABILITY AND INDEMNITY**

- (a) The Customer shall be fully liable for any personal injury, loss, damage, costs and/or expenses suffered or incurred by the Company and/or its People, which are caused by the Customer Materials; Customer Equipment and/or by the Customer or its People while on the Company's premises.
- (b) The Customer shall indemnify the Company its directors and its People 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, the Customer Equipment or the acts or omissions of the Customer or its People or any breach by the Customer of any of its representations, warranties or other obligations in this Agreement (including, but not limited to, claims by any third party for breach of Intellectual Property Rights or defamation relating to any Customer Materials or any failure by the Customer to observe the provisions and requirements of any applicable agreements).

#### **14. 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) On completion of the Services, the Customer acknowledges and accepts that it shall be fully responsible for ensuring that any pre- production Services meet with Customer's full satisfaction before processing to mass production and/ or commercial exploitation.
- (c) Subject to clause 9, 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 or the Customer Equipment; (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.
- (d) 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 part 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 or deemed approval from the Customer.

#### **15. SUB-CONTRACTS**

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

#### **16. 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 an act of God, terrorist attack, 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 and/ or Customer Equipment 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 and/ or Customer Equipment .

#### **17. INTELLECTUAL PROPERTY RIGHTS AND DEFAMATION**

- (a) Orders are accepted on the express condition that Intellectual Property Rights in the Customer Materials are held by the Customer and/or that the Customer has obtained all necessary clearances, licenses and permissions from the Intellectual Property Right owners and that the Customer Materials are not defamatory or in breach of any other third party's rights.
- (b) If the Company in providing the Services incorporates any Company Know-How in the Customer Materials, the Customer is hereby granted a royalty-free, worldwide licence, in perpetuity, to use such Company Know-How as part of the output of the provision of the Services but such Company Know-How 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 Company Know-How 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.

- (c) All Intellectual Property Rights in or arising out of or in connection with the Services, including in the Deliverables, shall be owned by the Company until full payment by Customer of all amounts due to Company under this Agreement, at which point, Company assigns all Intellectual Property Rights (except Company's Know-How), to Customer.

**18. CREDIT AND PROMOTIONAL USE**

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.

**19. 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.

**20. MISCELLANEOUS**

- (a) Any failure by the Company to enforce this Agreement 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.
- (b) This Agreement does not operate to create an agency, joint venture or partnership between the parties.
- (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.
- (e) where the Customer is making the order is a consumer, as such term is defined in the Consumer Rights Act 2015 (or other relevant legislation in force from time to time), the statutory rights of the Customer are not affected by this agreement.
- (f) In the event that any part of this Agreement shall be held to be void, voidable or otherwise unenforceable by a court of competent jurisdiction then the balance thereof shall remain in full force and effect.

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