

# Selected Works

Selected Works (Facility) Limited

## TERMS AND CONDITIONS OF BUSINESS

The following terms and conditions shall apply in relation to the supply of any services or goods by Selected Works (Facility) Limited ('Selected Works').

### DEFINITIONS

In this context, the terms and conditions have the following meaning:-

'Contract' means these terms and conditions, the quote and agreement between client and Selected Works for goods and services (facilities).

'Project' means the client confirmed project period for which Selected Works has agreed to provide the Facilities to the client;

'Client' means the person, firm or company contracting the facilities of Selected Works;

'Client's Property' means any of the client's works, digital files, films or other materials, equipment or other property which is the subject of the Facilities and is provided to Selected Works;

'Facilities' means the pre, post and production equipment, personnel, creative and production facilities, consultation, goods and all services which Selected Works is providing to the client in accordance with these terms and conditions;

'Deliverables' means all digital files, films or other materials provided by Selected Works pursuant to a project.

'Fee' total on the quote.

### 1. CONTRACT

1.1 All facilities are offered and all contracts are entered into subject to the following conditions of business.

1.2 The contract supersedes all previous conditions and overrides any alternative conditions referred to by the client and constitutes the entire agreement between Selected Works and the client.

1.3 Any changes from Selected Works terms & conditions must be accepted by Selected works in writing. Unless otherwise expressly stated in writing, all quotations and treatments requested by the client are invitations to contract services and acceptance of Selected Works terms and conditions.

1.4 The Client's acceptance of the quote is binding.

### 2. QUOTES, TAX, FEES AND CHARGES

2.1 The quotes and referred prices at Selected Works do not include Value Added Tax. Client shall be solely responsible for any sales, use, excise, value added, goods and services taxes and other similar transaction taxes including withholding taxes levied against or imposed upon the provision of any Services under this Agreement

Courier and delivery charges, meals, consumables, and any such VAT or external expenses shall be paid by the client.

2.2 Selected Works reserves the right to change the rates quoted at any time without prior notice.

### 3. QUOTES

3.1 The Quote forms the contract for services between Selected Works and the Client.

3.2 Whilst all the time and price quotes given by Selected Works are given in good faith and Selected Works will endeavour to adhere to such quotes, Selected Works will not be bound by such quotes where they are not met due to the client's changes or other circumstances outside Selected Works's control and Selected Works will not be liable for any failure to meet such quotes. Selected Works will not be responsible for any costs, charges or expenses incurred by the client as a result of such failure.

### 4. PAYMENT

4.1 Client will pay the agreed fee.

4.2 Except where these terms and conditions provide otherwise, and subject to paragraph (4.4) below, interim invoices for 1st & 2nd 50% of quoted fees are payable within 7 days from receipt.

All other payment of all fees and charges incurred shall be made to Selected Works within 30 days of the date of invoice and Selected Works reserves the right to charge interest on late payment at 4% above the Starling Bank base interest rate.

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4.3 All sums payable by the client shall be paid without any deduction whatsoever, whether by way of set-off, counterclaim or otherwise and for the avoidance of doubt the client shall not be entitled to the benefit of any such deduction to which it might otherwise be entitled in law or in equity. Selected Works shall be entitled in the event of non-payment in whole or in part to enforce any judgment obtained in relation thereto without any stay of execution pending the determination of any claim by the client against Selected Works.

4.4 Selected Works reserves the right to require payment of all fees and charges, in full or in part, in advance of the project period.

4.5 Any queries on the invoice must be raised within 10 business days of the date of the invoice.

4.6 Selected Works does not accept sequential liability.

4.7 All payments to be made in the currency in which they are invoiced and shall not be subject to any deductions or charges whatsoever.

4.8 In the event of default in payment by the Client under this Agreement, Selected Works shall be entitled, without prejudice to any of its other rights or remedies, to suspend any further performance of the Services without notice and to charge interest on any amount outstanding at the rate of 4% above the base rate of Starling Bank from the due date of payment to the actual date of payment. Client agrees to pay all reasonable costs and expenses (including legal fees) incurred by Selected Works, in connection with the collection of any monies owed by Client to Selected Works.

## 5. CANCELLATION

5.1 In its absolute discretion, Selected Works may at any time permit cancellation by the client of a project or order and reserves the right to cancel any project or order in the event of any breach of these terms and conditions by the client.

5.2 If notice of cancellation or postponement is given between the award date and final delivery date, the client will be liable to cancellation fees as set out below:

- a. More than 75% of production schedule: 100% cancellation fee
- b. Between 50-75% of production schedule: 75% cancellation fee
- c. Between 25-50% of production schedule: 50% cancellation fee
- d. From go ahead up to first 25% of production schedule: 25% cancellation fee

5.3 Cancellation fees are the full cost of the job as bid and any additional expenses, charges, fees or overages negotiated prior to the cancellation or postponement.

## 6. TITLE AND DELIVERY

6.1 Until payment in cash or cleared funds of all monies due from the client to Selected Works pursuant to a particular project:-

6.1.1 the physical property in all Deliverables shall, notwithstanding delivery, remain vested in Selected Works;

6.1.2 Selected Works shall have a general title over any property of the client in Selected Works' s possession for such monies due: and

6.1.3 the licence granted by Selected Works to the client pursuant to clause (8.2) shall not take effect.

6.2 Furthermore, such property shall not give pass to the client until Selected Works has also received payment in cash or cleared funds of all monies due from the client to Selected Works under any other projects or business transaction.

6.3 The client hereby grants an irrevocable licence to Selected Works so that it may enter upon any premises where any material are stored or where they are reasonably thought to be stored, during normal business hours, and repossess the same.

6.4 If the client fails to make payment within 14 days of such monies becoming due, Selected Works at its discretion shall be entitled to exploit or dispose of such property and apply any proceeds towards the monies due and any expenses in respect of such exploitation or disposal and shall, upon accounting to the client for the balance (if any) remaining, be discharged from all liability in respect of any such property.

6.5 Selected Works will endeavour to deliver any Deliverables as soon as practicable after receipt of all sums due to Selected Works from the client but Selected Works shall not be responsible for any loss suffered by the client due to delay in delivery unless such loss shall have been caused by the gross negligence of Selected Works.

## 7. INSURANCE

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7.1 Risk of damage to or loss of the Deliverables shall pass to the client on delivery, or if the client fails to take delivery, when Selected Works tenders delivery.

7.2 The client acknowledges that it is not possible for Selected Works to obtain insurance against any lost costs of production arising from loss or damage to the client's property.

7.3 Accordingly, the client shall take out and maintain such insurance cover against all risks as is necessary or usual in connection with production (including pre/post production), including lost production costs caused on loss or damage to the client's property (and its content) whilst under the custody or control of Selected Works.

## 8. INTELLECTUAL PROPERTY IN Deliverables

8.1 All Copyright in any recordings or other works resulting from the provision of the Facilities and/or embodied in any Deliverables shall vested in, and be exclusive property of, Selected Works.

8.2 Subject to Selected Works having received payment in cash or cleared funds of all monies due from the client to Selected Works pursuant to a particular project. Selected Works grants the client copyright to publish and transmit the finished deliverables as a whole in final form as supplied by Selected Works for the purpose originally contemplated.

8.3 The client shall have no rights whatsoever (and undertakes not) to use any Material or intellectual property rights of any type whatsoever contained in them separately from the finished product of the provision of the facilities as a whole or for any other purpose whatsoever.

8.4 Notwithstanding anything to the contrary contained herein, Selected Works shall retain ownership and possession of, and shall not be required to deliver to the client, any mechanical devices, processes, contractor's know-how, source or object code or application software which are used as tools to create the work. This includes any underlying technology, character design, modelling, rigging and animation used to create the contracted services and final picture. Should any IP or assets be required by the client, this would require further license outside as it would be outside of the original contract.

## 9. CONFIDENTIAL INFORMATION

9.1 The client shall take effective steps to keep confidential all confidential information relating to Selected Works or its business or financial affairs or the Facilities or other services provided by it, including any computer programs, production techniques, databases and any original ideas and concepts, know-how, designs and processes incorporated in or inherent in the Deliverables, which information is disclosed to or obtained by the client pursuant to or as a result of the provision of the facilities (other than information in the public domain other than by reason of a breach by the client of this provision) ('Confidential Information')

9.2 The client will not use or divulge any confidential information to any person (other than its professional advisers) and upon the termination of the project period, the client will return to Selected Works any confidential information (without retaining copies thereof) and any equipment or other provided by Selected Works (other than, for the avoidance of doubt, the Deliverables). Should the client wish to use any of Selected Works IP as described in 9.1 this may be granted under license.

## 10. Selected Works's LIABILITY

10.1 Save as otherwise expressly provided in these terms and conditions and to the fullest extent permitted by law:

10.1.1 The supply to any client of Deliverables and facilities are entirely at the client's risk and Selected Works shall be under no liability to the client or any other person for any direct, indirect or consequential loss or damage arising from any defect in the facilities and the Deliverables or any equipment or tapes used in relation thereto;

10.1.2 If the use of the facilities for the project is delayed, postponed, curtailed or cancelled for any reason affecting Selected Works, then unless such delay, postponement, curtailment or cancellation shall have been caused by the gross negligence of Selected Works, Selected Works shall not be liable for any loss or damage suffered by the client by reason thereof;

10.1.3 Selected Works shall not in any event be liable for economic loss (including loss of profit or goodwill) or any indirect or consequential loss or damage; and

10.1.4 All warranties, conditions, terms and representations relating to goods or services supplied by Selected Works (whether expressly or implied by statute, common law, use or otherwise) are hereby excluded.

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Nothing herein shall be construed as excluding or limiting (or seeking to do so) any liability on the part of Selected Works by reason of death or bodily injury caused by Selected Works's negligence.

## 10.2

10.2.1 Save as otherwise expressly provided in these terms and conditions and to the fullest extent permitted by law, Selected Works will not be responsible for any damage to or loss of any client's property held by Selected Works nor any loss (consequential or otherwise) arising in respect thereof, unless caused by Selected Works 's negligence in which case paragraphs (10.2.2) and (10.2.3) shall apply;

10.2.2 In the event of loss or damage to the client's property caused by Selected Works 's negligence during the project period Selected Works 's liability shall be limited to the cost expended by the client in fees and charges charged by Selected Works and shall not exceed the fee.

10.2.3 If the client shall notify Selected Works during the project period is valued by the client at a stated sum which exceeds the figure seated in paragraph (10.2.2) and shall agree to reimburse Selected Works with the cost of effecting special insurance cover for such recording during such period in the sum stated by the client in such notice ,the limitation of liability shall be the sum by the client and the figure in paragraph (10.2.2) shall not apply.

10.2.4 Subject to the above provisions of this paragraph (10.2), all of the client's property and all Deliverables held by Selected Works will be held by Selected Works entirely at the risk of the client, irrespective of the cause of any loss or damage and the client should insure the client's property to its full value against all risks and take and retain copies of all client's property before providing them to Selected Works .

10.3 Selected Works shall make available its equipment and the personnel it deems necessary to operate such equipment but the client shall satisfy itself that the facilities are suitable for its purpose and while Selected Works will use its best endeavours to ensure that all equipment and facilities perform in accordance with the specification for such equipment and facilities unless expressly agreed in writing at the time of the acceptance of the project, Selected Works shall not be responsible for ensuring that its equipment and the facilities provided by it are suitable for the client's purpose.

10.4 Selected Works shall not be liable for any reduction in the quality of its services that may be caused by the quality of the client's property or Selected Works 's adherence to the client's instructions.

10.5 The client shall indemnify Selected Works , its directors, and employees, servants, sub-contractors and agents all liabilities, actions and losses, claim, proceedings, judgement, damages, obligations, costs and expenses of any nature whatsoever (including, but not limited to, legal fees, costs and expenses) arising directly or indirectly out of or in connection with the client's property or the acts or omissions of the client, its servants, agents or representatives, or any breach by the client of any of its representations, warranties or 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 Deliverables or client's property or any failure by the client to observe the provisions and requirements of any applicable agreements).

## 11. NON-COLLECTION

11.1 Selected Works shall be entitled to destroy, erase or otherwise dispose of as it thinks fit any Deliverables or client's property in its possession and uncollected by the client after the expiration of six months from the end of the project period, and while uncollected by the client, such Deliverables or client's property shall be held by Selected Works at the client's risk as stated above.

## 12. TRANSFER OF OBLIGATIONS

12.1 Selected Works reserves the right to engage subcontractors and will retain responsibility to the client and for the Deliverables.

12.2 Any contract which is made between Selected Works and the client is personal to the client, who shall not assign or charge the benefit thereof without the express prior written consent of Selected Works.

## 13. REPRESENTATIONS AND WARRANTIES

The client represents and warrants to Selected Works that:-

13.1 Before the commencement of the project period it will obtain all consents licences and clearances required from the performers, copyright owners and any other person having any right or interest in connection with any of the client's property; and

13.2 Nothing contained in the client's property will be defamatory, offensive, obscene or otherwise unlawful or in breach of any intellectual property or any other right of any third party.

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## 14. FORCE MAJEURE

14.1 Selected Works shall not be under any liability to the client as a result of Selected Works being unable to perform any of its obligations or comply with any of the client's instructions due to circumstances beyond its reasonable control, including but not limited to, industrial action taken by any person or persons, and if Selected Works is so unable, it shall at its option either be entitled to perform such obligations or comply with such instructions as and when it is reasonably able to do so or to treat itself as wholly or partly released from all such obligations or instructions liability.

## 15. TERMINATION BY Selected Works

Selected Works shall, without prejudice to any other right or remedy which it may have, be entitled to terminate all of its obligations to the client upon the happening of any of the following events:-

15.1 If the client is at any time in breach of any obligation or representation or warranty to Selected Works, or any sum owing to Selected Works by the client is overdue by more 14 days; or

## 16. INSOLVENCY

If the client makes or offers to make any compensation with creditors or enters into a voluntary arrangement or if a bankruptcy petition is served on the client or (if the client is a limited company) any resolution or petition to wind up the client's business is presented or if a receiver or administrative receiver is appointed to deal with any part of the client's assets. Upon any such termination, the client will pay to Selected Works on demand all sums owing in respect of services already performed by Selected Works, together with relating to instructions given by the client before termination. So as to fully indemnify Selected Works in respect of all liabilities incurred in consequence of compliance with the client's instructions.

## 17. CREDITS & PR

The client shall ensure that Selected Works is given screen credits in respect of the facilities supplied by Selected Works in a form approved in advance by Selected Works. The client hereby grants Selected Works the right to refer in its advertising or promotional material to the client and to use the material or the title of any project or any work completed by Selected Works or the client in any such advertising or promotional material from the first date of transmission including finished projects and behind the scenes.

## 18. GENERAL

18.1 All notices given in accordance with these terms and conditions shall be in writing and may be delivered personally or sent by pre-paid first class post to the usual or last known address of Selected Works or the client. A notice shall be deemed to have been properly served if personally delivered, at the time of delivery, and if posted, forty-eight hours after posting. In providing service it shall be sufficient to show that the notice was delivered to the correct address or that the envelope containing the notice was properly addressed, pre-paid and posted.

18.2 No variation of these terms and conditions shall be effective unless made in writing and signed by a duly authorised director of Selected Works and the client.

18.3 The invalidity of any of these terms and conditions shall not affect the continuing enforceability of the remaining terms and conditions.

18.4 Any failure or delay by Selected Works in exercising or enforcing any rights conferred by these terms and conditions shall not be deemed to be a waiver thereof or operate so as to bar the exercise or enforcement of such rights at any time.

18.5 The contract between Selected Works and the client shall be governed by and construed in accordance with English law and Selected Works and the client agrees for the exclusive benefit of Selected Works that the English Courts shall have jurisdiction to settle any dispute relating thereto.