

## 12 Media Terms and Conditions Definitions

In these terms and conditions, unless the context otherwise requires:

Consumer means any individual who acquires 12 Media's services wholly or predominately for personal, domestic or commercial use.

Customer means any person or entity requesting 12 Media to provide Services.

12 Media means Atria Training Pty Ltd (ACN 154 705 263) trading as 12 Media of 144 South Tce Adelaide South Australia 5000.

Agreed Fee means the fees estimated by 12 MEDIA in any quotation once accepted by the Customer.

Materials means any goods, chattels, items or things, including but not limited to any photographs, documents (whether digital or hard copy), tapes, videos, films, footage, props and equipment provided by the Customer to 12 MEDIA for the purposes of 12 MEDIA supplying the Services.

Raw Footage means master footage recorded by 12 MEDIA as part of provision of the Services.

Services means video production and/or post production services.

### Application

These Terms and Conditions apply to and are incorporated into all contracts, agreements, arrangements, transactions and dealings entered into by 12 MEDIA with any Customer in relation to the provision of Services by 12 MEDIA.

All work carried out by 12 MEDIA is on the basis that the Customer has agreed to these Terms and Conditions.

### Consumer Contract

If the Customer is a Consumer:

These conditions do not affect any rights the Customer has under Schedule 2 of the Competition and Consumer Act 2010 (Cth); and these conditions do not affect the laws in force in the place in which the contract is made prior to the contract.

### Quotations

Quotations are calculated by estimating how long it will take to provide the Services under typical circumstances and are based on an hourly rate. One round of Customer changes and/or revisions is included in each quotation.

If the Customer instructs 12 MEDIA that significant changes and/or revisions to the scope of the Services described in a quotation are required then 12 MEDIA shall be entitled to charge an additional Agree Fee based on a further quotation.

### Cancellation

If the Customer has engaged 12 MEDIA to provide Services on a specified date, the Customer may notify 12 MEDIA in writing (during normal business hours) that the Customer does not require the Services to be provided on that date ("the cancellation").

If notification of the cancellation is provided outside of normal business hours, it is deemed to have been provided at the commencement of the following business day.

If the cancellation is made more than 48 hours prior to the day on which 12 MEDIA has been engaged to provide the Services, the Customer must reimburse 12 MEDIA for any expenses incurred by 12 MEDIA in preparation for provision of the Services.

If the cancellation is made between 48 and 24 hours prior to the day on which 12 MEDIA has been engaged to provide the Services, the Customer must pay 50% of the Agreed Fee.

If the cancellation is made within 24 hours of the time at which 12 MEDIA has been engaged to provide the Services, the Customer must pay the Agreed Fee in full.

If the cancellation is made while 12 MEDIA is providing Services to the Customer, the Customer must pay the Agreed Fee in full. Any amount payable pursuant to clauses 5.3, 5.4, 5.5 or 5.6 must be paid by the Customer within 30 days of the cancellation.

### Payment

The Customer will pay to 12 MEDIA the Agreed Fee in the following manner:

40% of the Agreed Fee will be payable prior to the commencement of the Services ("the Deposit"); and The balance will be payable within 14 days of the date of any interim or final invoices submitted in respect of the Services; and 12 MEDIA will not commence any pre-production activities until the Customer has paid the Deposit.

If any 12 MEDIA invoice or part thereof is not paid within 30 days of the date of the invoice, then the Customer agrees that interest will accrue on the outstanding amount at the rate of 7.5% per annum or the RBA cash rate + 2%; whichever is greater.

### Variations (additional quotation applies)

12 MEDIA will provide the Customer with one (1) 'draft copy' of an initial edited video file. The Customer must notify 12 MEDIA of all proposed changes within fourteen (14) days of receipt of the draft copy by the Customer.

Once the proposed changes have been made, 12 MEDIA will provide the Customer with a 'final draft copy' which is to be used solely for the purpose of verifying that the proposed changes have been correctly implemented. No new changes may be requested unless the Customer purchases another variation. The Customer must notify 12 MEDIA of any errors in the final draft copy within fourteen (14) days.

Once the fourteen (14) day review period for both the 'draft copy' and 'final draft copy' has elapsed, 12 MEDIA may refuse to make any further changes.

The Customer acknowledges that some changes may not be possible.

### Venue Location Fees & Permissions

The Customer must obtain any necessary consent or permission and pay any fees which may apply for 12 MEDIA to film at a particular venue, location or event.

### Artistic Licence

The Customer acknowledges and agrees that editing an event and the production of finished works may include elements of artistic expression and interpretation. 12 MEDIA reserves the right to use 'Artistic Licence' in any commissioned works that require editing or the production of finished works. The re-editing of commissioned works is offered as an optional extra by prior arrangement. A quotation for re-editing will be provided by 12 MEDIA on request (see clause 7 - variations above).

### **Customer's Materials**

All Materials are used and stored by 12 MEDIA solely at the Customer's risk and 12 MEDIA is under no obligation to insure any Materials.

Neither 12 MEDIA nor any of its officers, employees, agents or sub-contractors will be liable for any loss, destruction or damage ("Loss") of the Materials other than loss caused by their negligence but any liability for such loss will be limited to replacement of the Materials;

12 MEDIA will not be liable in respect of any Loss of the Materials arising out of the action of any person not employed or engaged by or associated with 12 MEDIA even though such person is present during and involved with the performance of the Services; and The Customer must retain a master copy of each and every recording delivered to 12 MEDIA for the purposes of the Contract.

### **Customer Acknowledgements**

The Customer acknowledges and agrees that:

12 MEDIA will have a lien on Materials provided by the Customer; and

No title (including any copyright) in the Services manufactured, produced, duplicated or otherwise provided by 12 MEDIA will be transferred to the Customer until the Customer pays all amounts due to 12 MEDIA in full.

The Customer acknowledges and agrees that upon payment of all outstanding invoices due to 12 MEDIA, the Customer is entitled to receive the finished works, but has no entitlement to the working files of 12 MEDIA.

The Customer acknowledges and agrees that the content, views and opinions expressed in the finished works produced for the Customer by 12 MEDIA are solely those of the Customer. The finished works are intended to represent the opinion of the Customer and in no way reflect the views and opinions of 12 MEDIA, its employees and subcontractors.

### **Customer Undertakings and Warranties**

The Customer must obtain all necessary permissions and authorities in respect of the use of the Materials which are to be included in the Customer video. The Customer indemnifies and holds 12 MEDIA harmless from any claims or legal actions related to the content of the Customer's video.

The Customer hereby indemnifies and holds harmless 12 MEDIA against all loss, damage, costs or expenses suffered or incurred by 12 MEDIA as a result of any breach of clauses 12.1 and 12.2

### **Project Delays and Client Liability**

Any estimate of the date by which 12 MEDIA will complete any part of the Services is contingent upon the Customer providing complete instructions to 12 MEDIA and fully cooperating with 12 MEDIA until 12 MEDIA has ceased providing Services to the Customer.

The Customer must appoint a person who has complete authority to provide instructions to 12 MEDIA and respond to requests for feedback until 12 MEDIA has ceased providing Services to the Customer.

The person appointed pursuant to clause 13.2 must be available to respond to communications from 12 MEDIA on every day which is a business day in Victoria.

### **Sub-Contracting**

12 MEDIA reserves the right to sub-contract any Services that 12 MEDIA has agreed to perform for the Customer as it sees fit.

### **Recorded Material Ownership**

The Raw Footage, video files, audio files and edited video files including all copyright remain the property of 12 MEDIA until full payment is made for the Services.

Where Services remain unpaid or in the event that a final agreed payment is not made, 12 MEDIA reserves the right to withhold all

recordings and finished works and use all or portions of the recordings and finished works for display, promotional or commercial purposes.

Copyright in all video, images, audio, lyrics or musical composition included or recorded in the edited video or recorded by equipment used by 12 MEDIA will remain the property of the author or legal entity owning the copyright.

### **Special Provisions for Ownership**

12 MEDIA reserves the right to retain ownership of any recorded material of an anomalous nature once discovered in post production. The copyright of such recordings will belong to 12 MEDIA.

12 MEDIA has the right to use edited or unedited video files produced pursuant to these Terms and Conditions for promotional or commercial purposes, unless an alternative arrangement is made between 12 MEDIA and the Customer. The copyright of such segments will belong exclusively to 12 MEDIA.

### **Disposal**

Raw Footage, video files, audio files and edited video files will be retained for up to twelve (12) months only and will then be disposed of, deleted or erased. If at the end of twelve (12) months Services have not been paid for, 12 MEDIA reserves the right to dispose of all Raw Footage, video files, audio files, edited video files, recorded materials and finished works.

### **Raw Footage**

The Customer may purchase Raw Footage in viewable format for an additional fee of \$200.00 per day of footage plus GST. If the Customer requires any Raw Footage to be provided by way of a separate hard disk, then Customer must pay 12 MEDIA an additional fee of \$250.00 plus GST.

### **Failure of Equipment or illness of 12 MEDIA employees and contractors**

Whilst all reasonable care and preparation is taken for videography and editing, 12 MEDIA will not be liable for any compensation except for return of any Deposit paid, should a failure occur in all or any of the electronic equipment used or due to illness of the operators or person(s) employed or engaged by 12 MEDIA or because of an unforeseen event or any dispute regarding the ownership of recorded materials.

### **Right of Refusal or Termination**

12 MEDIA reserves the right to terminate the provision of Services, if:

the videographer, or any person(s) employed or contracted by 12 MEDIA is placed in a position where there is an actual or apparent risk of injury; or

there is a risk that any of the equipment used may be damaged.

If 12 MEDIA terminates the provision of Services pursuant to clause 18.1 then any Deposit paid by the Customer is non-refundable. Should any of the circumstances outlined in clause 18.1 occur, 12 MEDIA may seek compensation from the Customer for any loss or damage suffered.

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### **Limitation of Liability**

The parties acknowledge that, under applicable State and Commonwealth law, certain clauses, conditions, guarantees and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of goods or of services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). Except to the extent of Non-excludable Rights, 12 MEDIA will not be liable for:

Any claim by the Customer or any person, including without limitation any claim relating to or arising from all clauses, conditions, guarantees and warranties express or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom, usage or otherwise; and Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by 12 MEDIA in writing, and the liability of 12 MEDIA for any such matters is hereby excluded.

Where (and to the extent) permitted by law the liability of 12 MEDIA for a breach of a Non-excludable Right can be limited, 12 MEDIA's liability is limited, at 12 MEDIA's option, to one of the following:

The supply of the service again; or

Payment for the cost of having the services supplied again.

Notwithstanding any other provision, 12 MEDIA is in no circumstance (whatever the cause) liable in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise to compensate the Customer for:

Any increased costs or expenses;

Any loss of profit, revenue, business, contracts or anticipated savings;

Any loss or expense resulting from a claim by a third party; or

Any special, indirect or consequential injury, loss, damage or expense whatsoever and howsoever arising.

### **Force Majeure**

If 12 MEDIA cannot carry out an obligation under the Contract either in whole or in part because of anything outside its reasonable control, including without limitation, fire, flood, storm, earthquake, explosion, accident, road or rail closures, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage, act or omission of any third person or public authority, then 12 MEDIA's obligations under the Contract will be suspended for the duration of the event or waived to the extent applicable.

### **Legal Costs**

The Customer will be liable for any legal costs incurred by 12 MEDIA in the recovery of unpaid invoices on an indemnity basis.

### **Privacy**

All information received by 12 MEDIA from the Customer, written or otherwise, will be kept confidential. Any private information will not be divulged or distributed to any third party without the Customer's consent.

### **Other Matters which Affect the Contract**

The laws of South Australia apply to the Contract and the Customer must bring any proceedings against 12 MEDIA in a South Australian Court.

If a condition or part of a condition is unenforceable, it must be severed from the Contract and does not make the rest of the Contract unenforceable.

12 MEDIA is not bound by any waiver, discharge or release of a condition or any agreement which changes the Contract unless it is in writing and signed by or for 12 MEDIA.

### **Amendment**

12 MEDIA reserves the right to amend these Terms and Conditions at any time. Amendments will be effective after the Customer has been given 7 days written notice.