

# General Terms and conditions AdventureGraph e.U. based on the general order and delivery conditions of the film and music industry association Austria

as of 25. March 2019

## General

- 1.1 The general order and delivery conditions of the film and music industry association Austria apply to all ordered productions. They are designed for legal transactions between businesses and are an essential part of every offer and every contract.

Should there be legal transactions made with clients under the current Consumer Protection Act BGBl Nr 140/1979 they are only valid insofar as they do not contradict the first main part of this law.

A legal binding of the producer occurs only through the business confirmation of the offer/order (confirmation is permitted through email with a digital signature) or with the undersigned contract. With the undersigning of the contract or with the order confirmation, the general order and supply conditions will have been accepted.

- 1.2 The client's production of the film, regardless as to the carrier material, follows on the basis of the approved screenplay or offer being made available to him, including the acceptance of the written conditions. The producer's, or on his behalf developed treatments, scripts, drawings, plans and similar documents, remain as his intellectual property, provided that they are not

used in the film or no fee has been agreed upon. Any use, in particular the disclosure, reproduction and publication requires the explicit approval of the producer.

- 1.3 It is stipulated in the production contract or the accepted offer for which distribution areas, media coverage and time periods the film is to be produced.

## Costs

- 2.1 The contractually agreed price includes all the production costs and a demonstrable first copy as in accordance with section 7.2.
- 2.2 Filming postponements due to weather (weather risk), are usually not included in the calculated production costs. In this bracket, additional costs plus operational expenses will be included in the invoice.
- 2.3 An extra contract can be drawn up for the production of treatments or scripts. In this contract the agreed price by the client must also be paid when the treatment or script cannot be filmed or withdrawal from the contract takes place.

If a screenplay or a previously existing film is made available by the client or a from him appointed trustee, the full legal transfer to the producer is to be carried out.

- 2.4 If the client requires the completion of a particular insurance, he is to inform the producer of this no later than the conclusion of the contract. The client has to reimburse the costs.
- 2.5 If not agreed upon otherwise the travel expenses refer to the tax-deductible costs as the Austrian law stands, including the actual amount of verifiable expenditure of overnight stays.
- 2.6 The client bears the cost of any expert advice compelled by the client.

**Production, modification, foreign language versions, delivery deadline**

- 3.1 Preliminary work and/or filming and comparable work (see 5.2) begins at the earliest only after the signing of the production contract or the acceptance of the offer has taken place.
- 3.2 The responsibility of the artistic and technical design of the work lies by the producer.

The producer is to instruct the client as to the location and intended, rough procedure of filming.

- 3.3 Pre completion, should the client require changes in the production's timing arrangements, the manuscripts, the script or already produced parts of the film, these are to be made at the clients own expense with the exception of legitimate complaints. The producer is to inform the client of the anticipated cost of these changes without delay.
- 3.4 After acceptance of the film, should the client have further requirements for change he is to put these changes in writing. The producer has the obligation and the authority to make these changes, the costs of which are to be borne by the client.
- 3.5 If, for artistic or technical reasons, any amendments are proposed by the producers after the approval of the script or the offer

has taken place, that lead to additional costs beyond the agreed upon production price, they will require prior written consent of the client. Not explicitly approved additional costs can not be claimed.

The length of the film is stipulated in the production contract or the accepted offer. The running duration is considered to be met if the difference in length of the final cut is no more than 10% of the agreed upon length as long as not agreed upon differently by writing.

- 3.6 In the case of the production of foreign language versions of the film through subtitling or dubbing, a corresponding agreement must be made.

**Liability**

- 4.1 The producer is obliged to produce a technically accurate product. He provides a guarantee that the product is faultless in sound and picture quality.
- 4.2 If in the production of the film circumstances occur which make conventional production not possible, the producer must only expect to represent himself for purposeful action and gross negligence.

The same applies if the film is not completed seasonably. The inability to manufacture or the non-timely completion of the film, for which neither the client nor the producers are responsible, allows only that the client withdraws from the contract. The previously provided services plus operational expenses will however be charged.

- 4.3 Defects, recognized by the producers are to be removed by him. If these corrections can not be carried out without the participation of the client or his adviser, the producer can, after unsuccessful corresponding attempts at correction over a statutory period of at least two weeks, regard the con-

tract as fulfilled. The producer is entitled to refuse the elimination of the mistakes until prior dues have been paid by the client.

- 4.4 The producer is liable for all legal violations committed by him during the production. However the client carries the risk of any props and film components that have been made available by him.

#### **Withdrawal of the client from the contract**

- 5.1 If the production contract has been issued and the client, through no fault of the producer, resigns from the contract, the producer is entitled to invoice the actual net cost, the share operational expenses and the total profit loss.
- 5.2 In the event of an order withdrawal which occurs in the period between 10 and 4 days before filming or comparable work begins, the producer is entitled to include 2/3 of the calculated net cost accepted by the client, plus operational expenses and the total profit loss, in the invoice.
- 5.3 If the client withdraws an order between 3 and 1 days before filming or comparable work begins (cf. 5.2), the total calculated commissioned cost will be invoiced.

#### **Payment terms**

- 6.1 Unless agreed otherwise the following payment conditions apply:
  - i. 1/3 when the contract or offer is signed,
  - ii. 1/3 when the filming or comparable work (cf. 5.2) commences,
  - iii. 1/3 when the product is accepted.
- 6.2 In the event of a production volume of at least € 250.000,- excluding VAT., the last third (cf. 6.1) will be divided as follows:
  - i. 1/6 accepted rough-cut,
  - ii. 1/6 delivery and final product acceptance.

#### **Copyrights, patent rights**

- 7.1 The film will be produced on the basis of the accepted script or accepted offer accepted by the client and the film producer. The producer has § 38/1 Urh.G. at his disposal concerning all the necessary patent copyright exploitation rights (except if they are of concern for a copyright company), in particular those necessary in fulfilling the contract's requirements for distribution, transmission, performance and protection even after the completion of the work are managed by the producer.
- 7.2 It is to be agreed upon in the production contract or accepted offer to what extent the utilization rights (spatially, temporally) are granted after the full production costs have been paid.
- 7.3 Excepted from the acknowledged rights are in all cases the rights for duplication, adaption, addition, foreign language dubbing and the use of excerpts in picture and/or sound, in as far as they have not been contractually, expressly agreed upon and for which at least lost profits for the production have been paid separately.

This is without prejudice to any compensations for damage .

- 7.4 The client declares himself expressly to be in agreement with the statutory declarations made by the producer to the appropriate copyright companies.
- 7.5 To secure the copyright rights, the raw material (picture and sound), in particular negatives and master tape as well as the rest-material, remain with the producers.
- 7.6 The producer commits himself, when requested by the client and in lieu of costs, to the appropriate professional storage of the original of the delivered visual and audio material. The storage period is seven years for television productions and five years for all other productions.

The client or his representative has to ask in written form for storage of a longer duration before lapse of time. The payment terms are according to the guidelines of the film and music industry association Austria.

- 7.7 In as far as the rights (excepted from those permitted, as in section 7.3) are compensated and contractually assigned for utilization by the client, the client claims liability as in section 7.6 for the storage insofar as not otherwise agreed.
- 7.8 With the delivery of the film the risk for the copied documents goes to the client, even if the film is in storage by the producer or a storage company assigned by him.

#### **Other provisions**

- 8.1 The opening title credits and the closing credits are part of the script and are to be approved by the client.
- 8.2 The producer is entitled to display his company name and it's logo as part of a copyright notice. He also has the right to show or have shown, the film for competitions and festivals as well as for self-promotion (example).

For self-promotion, the use of excerpts or other visual material on the producer's own web presences or representations is permitted and handled analogously to showing a self-promotion.

- 8.3 In the case where a number of clients grant the contract for a film, it must be retained in writing which client has the power of attorney over the other clients as delivery of clarification to the producer in the preceding points. This applies particularly to the notation of those persons responsible for the inspection of the film.
- 8.4 Insofar as several co-producers are contracting, the definition of point 8.3 is considered analogously.

- 8.5 Changes in the production contract and/or the production conditions require written confirmation. Should, through a provision in the production contract, manufacturing and supply conditions be ineffective, the validity of the remaining provisions not affected.
- 8.6 The completion of the contract is to be carried out at the headquarters of the producer.
- 8.7 In the event of disputes, an agreed upon competent court is to be summoned to the producer's headquarters. This court must be in compliance with Austrian law.
- 8.8 These general terms and conditions apply analogously for photographs and stills produced by the producer, independent of the used production procedures and technology.