



Evolutions Media Limited

Terms and Conditions of Business

1. Definitions

In these Conditions:

“the Company” means Evolutions Media Limited which may also trade under other names.

“the Customer” means the person, firm, company or other body using the services of the Company.

“Services” means the services forming the subject of the contract between the Company and the Customer.

2. Incorporation of Conditions

These Conditions are the only terms or conditions on which the Company gives quotations, accepts bookings or orders or supplies the Services and (subject to the provisions of this Clause 2) override any other representations, terms or conditions stipulated, referred to or implied by the Customer or the Company, its servants or agents whether in any order or in any document or in any negotiation or discussion. No variation of these Conditions shall be effective unless made in writing by a Director of the Company.

3. Bookings and Orders

A contract shall exist between the parties upon and only upon the Company accepting the Customers booking or order and accordingly each booking when accepted in accordance with these Conditions constitutes a separate contract between the parties.

4. Charges and Rate Card

The charges applicable are those appearing in the Company’s published Rate Card current at the time of the acceptance of the booking or order. Charges are quoted in Pounds Sterling exclusive of VAT, which shall be paid by the Customer. The Company reserves the right to alter the terms of its Rate Card at any time without prior notice provided that unless an increase in charges is solely the result of an increase in the cost to the Company of fulfilling the booking or order the Customer shall be entitled to cancel the booking or order. To be effective a cancellation in the circumstances of the last preceding sentence must be in writing and received by the Company within 24 hours of the increase in charges being communicated to the Customer.

Extras and overruns which are surplus to the quoted value for your project may be incurred during the course of the project. Supplementary to the agreed billing structure for the project, the Company reserves the right to invoice such extras and overruns retrospectively on a monthly basis during the course of and subsequent to the completion of the project.

5. Payment

Payment for the Services shall be due within 30 days of the date of invoice (“the due date for payment”). The Customer shall provide written notification to the Company of any dispute in relation to such invoices within 14 days of the date of the invoice, otherwise, the invoice shall be deemed to be acceptable to the

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Customer. In the case of default, the Company reserves the right to retain all materials associated with the defaulting client and to charge interest on payments outstanding after the due date for payment at the rate of 1.5 per cent per month calculated on the outstanding balance (including interest) due from the due date for payment down to receipt by the Company of payment such interest compounding and being added to the outstanding balance due at weekly intervals. The Company reserves the right to require payment in part or in full in advance of the date of performance of the Services. In the case of agreed credit card payment, a 3% service charge will be added. Should full payment still not be received within a period of six months from date of any invoice not queried in writing and sent by recorded delivery to the registered office of the Company, and a repayment scheme not having been agreed and adhered to, the Company reserves the right without further notification, to recover part or all of the debt by the sale of any materials being held on behalf of the defaulting Client irrespective of whether legal proceedings have already been initiated.

6. Performance

The Company shall use its best endeavours to undertake every job ordered by a Client in an appropriate and professional manner. Responsibility rests with the Client to ensure that all material generated by the Company meets their requirements and, if not, must notify the Company in good time for it to have the opportunity to inspect the material, and at its discretion and in consultation with the Client make any changes as may be deemed necessary. The Company shall not be liable for any charges or other consequences of its non-performance. Any dates, times or periods quoted by the Company for performance of the Services are estimates only and the Company shall not be liable for failure to meet such estimates or for any costs, charges or expenses incurred as a consequence of such failure and accordingly the Customer shall not be entitled to refuse to accept Services merely because of such failure. The Company may employ subcontractors to perform part or parts of the Service.

7. Cancellations

At its absolute discretion, the Company may at any time permit cancellation of a booking or order and reserves the right to cancel any booking or order in the event of any breach of any of these Conditions by the Customer. Cancelled bookings will be chargeable at the full quoted rate, unless a lower amount is mutually agreed between the parties.

In the event a production requires access to offline edit suites for a period longer than that specified in the agreed quote or order, then the Company, at its absolute discretion, may allocate alternative edit suites, or require the use of 'Remote' edit services, to enable the completion of the offline edit.

8. Risk and Title

Risk in relation to the Customer's media will at all times remain with the Customer. The Company cannot insure against loss of or damage to the content of Customer's media and accordingly LIABILITY IN RESPECT OF SUCH LOSS OR DAMAGE EVEN WHEN THE RESULT OF NEGLIGENCE ON THE PART OF THE COMPANY, ITS SERVANTS, AGENTS OR SUBCONTRACTORS IS HEREBY EXCLUDED. The Customer should therefore retain copies of the media or insure against any loss or damage. The Customer agrees and acknowledges that the Company shall in no circumstances be liable for any indirect, economic or consequential loss or damage in connection with any act or omission by the Company, including but not limited to any delay in delivery or performance of the Services.

The legal and equitable title to the goods or media that is the subject of the contract or any relevant part thereof shall only pass to the Customer upon the Customer paying to the Company all sums due and payable by it to the Company under the contract and all other prior contracts between the Company and the Customer. The Company may recover goods in respect of which title has not passed to the Customer at any time. Until title to the goods or media has passed to the Customer pursuant to the terms hereof, the Customer shall possess the goods or media as a bailee of the Company on the terms of these conditions. The Customer shall be entitled to re-sell or use the goods or media in the ordinary course of its business but shall account to the Company in respect of the proceeds of sale or otherwise of such goods. The Company shall be entitled to trace the proceeds of sale or otherwise of the goods or media.

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9. Intellectual Property and Data Protection

The Customer shall indemnify and keep indemnified the Company against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any Copyrights or other intellectual property rights or any defamation or alleged defamation arising out of the processing or reproduction of the Customer's films or tapes by the Company.

The Customer hereby grants to the Company a perpetual and royalty free licence to use all materials processed and/or produced by the Company on the Customer's behalf to promote the Company's business and in connection with appropriate industry awards

The Company is an authorised data controller for the purposes of the Data protection Act 1998 under registration number Z8286416.

10. Force Majeure

The Company shall not be liable in any way for any loss or damage arising directly or indirectly, through or in consequence of performance of the Services being prevented or delayed by happening or occurrences due to or by reason of any matters or things beyond control of the Company.

11. Customer's Undertakings

The Customer shall at all times indemnify the Company in respect of all loss or damage suffered by any person, firm, company or property and against all actions, claims, demands, costs, charges or expenses in connection therewith for which the Company may become liable in respect of the Services. The Customer accepts full liability for and shall at all times indemnify the Company against all actions, claims, demands, costs, charges and expenses whatsoever arising out of any loss or damage to any person, firm or company by reason of deficiencies in the materials or data or the like supplied to the Company by the Customer in connection with the performance of the Contract.

12. General Lien

The Company shall have a general lien over any of the goods or chattels of the Customer in the Company's possession for any monies whatsoever due from the Customer to the Company. If any lien is not satisfied within 14 days of such monies becoming due, the Company may in its absolute discretion sell or make use of such goods or chattels as agents for the Customer and apply the proceeds towards the monies due and the expenses of the sale and shall upon accounting to the Customer for the balance (if any) remaining, be discharged from all liability in respect of such goods or chattels.

13. Assignment

Each Contract is personal to the Customer who shall not assign or charge the benefit thereof without the Company's express written consent.

14. Notices

Notices shall be made in writing and posted in a first-class pre-paid envelope to the Customer's or Company's address at which the one party reasonably believes the other to be carrying on business. A notice shall be deemed to have been given forty eight hours after posting (or ninety six hours after posting where the notice is sent from and/or addressed to an address outside the United Kingdom) and in proving such service it shall be sufficient to show that the envelope was properly addressed and put into the post

15. Proper Law

The validity construction and performance of each contract shall be governed by the Law of England and the parties hereby submit to the sole and exclusive jurisdiction of the courts of England and Wales for the resolution of all disputes arising under any contract.

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16. Severance

The Conditions shall apply in full save that if any Act of Parliament or other Statutory Provision for the time being in force shall avoid or make unenforceable any of the provisions hereof these Conditions shall be deemed to apply with the exclusion of the provisions hereof which shall be void or unenforceable as aforesaid.

Supplemental Provisions for Location Work

These provisions are supplemental to Evolutions standard terms and conditions of business.

1. Health, Safety and Fire

- 1.1. The Customer shall at all times comply with all safety requirements, including but not limited to those issued by the Health & Safety Commission and Executive and any additional safety requirements notified orally or in writing to the Customer.
- 1.2. The Customer shall:
 - 1.2.1. assess reasonably foreseeable risks to health and safety (including fire) that may affect Evolutions or any third party arising out of or in any way connected with the performance of the Contract, and provide a copy of such assessment to Evolutions upon reasonable request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with Evolutions accordingly.
 - 1.2.2. fully co-operate with Evolutions and any others as necessary to ensure that all reasonably foreseeable risks to health and safety (including fire) that may affect Evolutions arising out of or in any way connected with the performance of the Contract are eliminated or adequately controlled.
 - 1.2.3. consult with Evolutions on the procedures to be followed in the event of serious and imminent danger to any persons that may affect Evolutions arising out of or in any way connected with the performance of the Contract and shall comply therewith.

2. Additional charges

- 2.1. Subject to Production confirmation of geographical location, catering/per-diems and transport logistics the following costs will be invoiced.
 - 2.1.1. Should location not be catered or per diems paid direct by Production a flat daily fee of £35 per person shall be chargeable for staff sustenance.
 - 2.1.2. Cost for rig and technical equipment transport to and from location will be charged as used.
 - 2.1.3. Any overseas location will incur a charge for insurance and any import/export duties, unless paid direct by Production.
 - 2.1.4. Should crew transport not be organised by Production; transport charges (public transport or mileage) shall be charged as location demands.
 - 2.1.5. Should Evolutions technical staff rostering require overnights and suitable accommodation is not provided by Production alternative will be chargeable.

3. Exclusion and Limitation of Liability

- 3.1. The customer acknowledges that electronic equipment may suffer breakdown or malfunction

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from time to time without fault and that the consequences to the customer of breach of this agreement by Evolutions may be disproportionate to Evolutions hire charges. Therefore the customer agrees that Evolutions entire liability to the customer in respect of the Contract and any breach or negligent act or omission (including liability for acts or omissions of Evolutions employees, agents and sub-contractors) shall be limited as follows:

- 3.1.1. except as provided in these terms, all conditions, warranties and representations concerning the equipment, their state, quality, description, fitness for purpose or otherwise are excluded to the fullest extent permitted by law;
 - 3.1.2. Evolutions liability in respect of each event or series of connected events shall not exceed the total hire charges received by Evolutions except that in the case of recorded material, Evolutions liability shall be limited to the cost of replacing blank media only and in the case of loss of or damage to physical property caused by Evolutions negligence, Evolutions liability shall be limited to £1,000,000;
 - 3.1.3. Evolutions will not be liable for any loss, damage or expense caused by any interruption or loss of use of equipment, increased cost of working, delay, loss of profit or goodwill, special, consequential or indirect damage however caused, even if reasonably foreseeable or Evolutions was advised of the risk of its occurrence;
 - 3.1.4. Evolutions shall have no liability arising out of the Customer's inability to operate the equipment in accordance with manufacturer's instructions and for its proposed use;
 - 3.1.5. Customer agrees to indemnify Evolutions against all losses, damages and claims in relation to the handling, transportation, storage, usage and operation of the equipment from leaving Evolutions premises to safe return;
 - 3.1.6. Customer shall insure against its liability to indemnify Evolutions and all other liabilities of the Customer in relation to the equipment. If requested by Evolutions, the Customer shall produce a copy of any insurance policy together with evidence of the premium having been paid, held by the Customer and relevant to the purpose;
 - 3.1.7. Evolutions shall have no liability arising out of the Customer's inability or failure to deliver environmental conditions suitable for the operation of enterprise level broadcast equipment; Specifically, but not exclusively: an uninterrupted protected power feed to be presented to Evolutions equipment by the Customer to European standard EN 50160 (240V +/-10%), a dry secure environment free of dust, vermin, moths or insects, mould, fungus, potential sources of or conditions which may lead to condensate and any other elements, factors or contaminants which may adversely affect or damage the equipment, with cooling capable of dissipating up to 55,000 BTU of heat.
- 3.2. If so requested by the Customer, Evolutions may consider accepting higher limits of liability subject to payment by the Customer of an additional charge.
- 3.3. Evolutions shall be entitled to use up to ten percent (10%) of the billed daily time on the job at its discretion for maintenance, etc., without any deduction for such 'Down Time' from the total charges payable by the Customer. Evolutions shall make all reasonable efforts to have its equipment functioning to meet the Customer's shooting schedule; however, Evolutions shall not be liable for and the Customer shall indemnify and hold Evolutions harmless from any and all general and consequential damages suffered by the Customer or third party beneficiaries of the Customer, including compensation to personnel, from any cause including malfunction of the equipment. In the event of equipment failure or malfunction at a job site. Evolutions cannot accept responsibility for malfunctions reported after termination of rental.
- 4. Termination**
- 4.1. Hire shall forthwith terminate without notice if the Customer shall (being an individual) die or be subject to an interim order (within meaning of Insolvency Act 1986) or the presentation of a bankruptcy petition; or enter into any arrangement or composition with creditors; or (being a limited company)

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enter into compulsory or voluntary liquidation (not being for the purpose of reconstruction or amalgamation on terms previously approved by Evolutions in writing); or have a receiver appointed or a petition presented for an administration order; or have any distress, execution or other legal process made in respect of Customer's property; cease or threaten to cease to carry on business; or if anything analogous to the foregoing under the laws of any jurisdiction shall occur in relation to the Customer.

- 4.2. Evolutions may serve notice on Customer terminating hire forthwith if the Customer: fails to pay any sums payable hereunder in full on the due date; commits a breach of any other provision hereof and (if capable of being remedied) fails to remedy such breach within 7 days after notice from Evolutions requiring the same; or shall cause or permit to be done any act or thing whereby Evolutions rights in the equipment are prejudiced.
- 4.3. The Customer shall become immediately liable to pay to Evolutions: all costs and expenses (including without limitation, any legal costs and expenses) incurred by Evolutions in locating, repossessing or restoring the equipment, collecting any sums due or otherwise in obtaining due performance of Customer's obligations hereunder; all arrears of hire charges and other sums payable with interest thereon at the default rate; and the unpaid balance of the hire charges.
- 4.4. Evolutions may terminate the hire without liability to the Customer if performance by Evolutions is prevented by circumstances beyond Evolutions' reasonable control (including, without limitation, fire, flood, trade dispute or industrial action, war, riot, civil disturbance or terrorist act, legal or governmental restriction or embargo). In such event, the Customer shall be liable for hire charges, apportioned as appropriate, to date of such.