



**PETER BARON**  
C R E A T I V E

## **Terms & Conditions**

By placing an order with Peter Baron Creative Ltd (PBC) - [the 'Supplier'] you [the 'Customer'] confirm that you are in agreement with and bound by the Terms and Conditions stated below.

### **1. Basis of Contract**

1.1 The Order constitutes an offer by the Customer to purchase Services (as defined on the Quotation Form) from the Supplier in accordance with these conditions.

1.2 The Order shall only be deemed to be acceptable when the Supplier issues written acceptance of the Order at which point and on which date the Quotation Form and these Terms and Conditions (together the "Contract") shall come into existence. For the avoidance of doubt written and writing includes email and fax.

1.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of The Supplier, which is not set out in the Contract.

1.4 These conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.5 Any quotation given by the Supplier shall not constitute an Offer and is only valid for a period of 21 days from the date of issue.

### **2. Supply of Services**

2.1 The Supplier shall supply the Services to the Client in accordance with the Quotation Form.

2.2 The Supplier shall use its reasonable endeavours to meet the dates referred to in the Quotation Form.

2.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer by prior writing notice in any event.

### **3. General Conditions**

3.1 The Supplier shall only be obligated to commence work once an Order has been received by the Supplier from the Customer in writing (letter, email or fax), together with a Purchase Order from the Customer detailing project and cost as per the Quotation Form.

3.2 For all post-produced film and video projects, the Supplier agrees to carry out one set of amends per project as standard. The Supplier will provide the project for approval, at which stage The Customer is required to review and feedback consolidated amends from all interested parties. The Supplier will endeavour to action all required amends to complete the project, provided those amends do not contradict the services set out in the original Quotation Form, or constitute requests over and above those set out in the original Quotation Form. The Supplier will provide one amended file (the 'Master') to the client in the format specified at point of order. Any further amends will be subject to additional cost, on a time and material basis.

3.3 An 'Order' is deemed to be a written contract between the Supplier and the Customer.

### **4. Customer's Obligations**

4.1 The customer shall:

(a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate.

(b) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects.

(c) obtain and maintain all necessary licenses, permissions and consents which may be required before the date on which the Services are to start.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

(a) The Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) The Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this and clause 4.2; and

(c) The Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

### **5. Charges and Payment**

5.1 The Charges for the Services shall be on a time and material basis:

(a) the Charges shall be calculated as provided on the Supplier's Quotation Form.

(b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses.

5.2 The Supplier may request a deposit of no less than 50% of the project total from the Customer, prior to commencing with the project.6.3 The Supplier shall invoice the customer on completion of the Services

5.3 The Customer shall pay the invoice submitted by the Supplier:

(a) within 30 days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier; and time for payment shall be of the essence of the Contract.

5.4 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("Due Date"), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the Bank of England base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.5.5 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **6. Intellectual Property Rights**

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

6.2 The Customer acknowledges that, in respect of third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensee on such terms as will entitle the Supplier to license such rights to the Customer.

6.3 The Supplier shall be entitled to include details of Services supplied to the Customer on the PBC Website, this may include footage of the Deliverables (unless it is agreed in writing by both parties at the commencement of the Contract that this is confidential) and links to the Customer's website.

6.4 The Supplier accepts no responsibility for copyright infringements caused by materials used and submitted by the Customer. The Supplier reserves the right to refuse any material that it believes to contravene copyright laws unless proof is given that permission has been granted to use the material. It is the responsibility of the Customer to provide all agreed materials as agreed in writing. Any significant delays caused due to the failure of the Customer to provide agreed materials may be chargeable.

## **7. Confidentiality**

7.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial 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 ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Clause 7 shall survive termination of the Contract.

## **8. Limitation of Liability**

8.1 Nothing in these conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to Clause 8.1,

- (a) the Supplier will not be liable to the Customer; whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract.
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed the amount to be charged by the Supplier to the Customer for the supply of the Services in accordance with the Quotation Form.

8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This Clause 8 shall survive termination of the Contract.

## **9. Termination**

9.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Contract on the due date for payment;
- (b) the Customer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Supplier being notified in writing of that breach;
- (c) any winding up or bankruptcy proceedings are commenced against the Customer;

(d) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

(e) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

Upon termination:

(a) The Customer shall immediately pay the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) The Customer shall return all of the Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safekeeping and will not use them for any purpose not connected with this Contract.

9.2 The Supplier shall use its reasonable efforts to ensure any deadlines agreed between the parties are met and all reasonable efforts to inform the Customer in the unlikely event of delay. Should a delay exceeding 60 days occur which is not subject to clause 3 or 9 and is not due to any act or omission of the Customer, the Customer may terminate the Contract, upon which the Supplier will refund monies paid under the Contract up to the date of termination.

9.3 Either party may terminate this agreement on one month's written notice to the other party (or such other period as set out in the Quotation Form) subject to the Minimum Payment being paid by the Customer to the Supplier within 30 days of receipt of an invoice.

## **11. General**

11.1 Force Majeure:

(a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

(b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 8 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11.2 Assignment and subcontracting:

The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in

any manner any or all of its obligations under the Contract to any third party or agent. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### 11.3 Notices:

(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

#### 11.4 Waiver:

(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

#### 11.5 Severance

(a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any valid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

11.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.8 Variation: Any variation, including the introduction of any additional terms and

conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

11.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## 12. Supplier details

Peter Baron Creative Ltd is a company registered in England and Wales under company number: 14897013. Registered office: The Old Doctor's House, 74 Grange Road, Dudley, DY1 2AW

PBC expects 50% of final payment on signing of the contract and the final 50% on completion of production.

Final payment is due no later than 14 days after the date of the final invoice.

Product will be delivered once final payment has been received and cleared.

Payment by bank transfer or cheque.

All cheques must be made payable to Peter Baron Creative Ltd

Client is responsible for all expenses incurred by PBC during all stages of a production. Including but not exclusively: transport, food, accommodation, equipment hires, communication costs and media.

On delivery of final product copyright will be transferred to the client, PBC will retain the right to use all approved footage for their own promotional purposes. This may exclude any third-party material (e.g., Music).

The customer's requirements must be clearly provided to PBC in writing before commencement of work. Any subsequent changes must also be provided in writing and then approved by PBC and may incur further cost.

A video programme will only be publicly released by PBC once the customer approves all content as complete and satisfactory and confirms this in writing.

A customer may terminate the contract at any time by written notice of termination. When a customer terminates the contract, they will remain liable to pay in full for all work previously undertaken and in progress by PBC unless any other written agreement is reached in advance.

PBC reserves the right to refuse to use, publish or broadcast any information it considers obscene or morally unsuitable or which would breach copyrights, or which is libelous, defamatory or illegal.

PBC cannot be held liable to any party for any errors on any medium after the customer has agreed in writing that the content is correct and accurate and should be posted, published or broadcast.

E-mail correspondence shall be sufficient to prove changes to agreements for the form and content of programmes as long as it is acknowledged with a response.

PBC will not commence work on any project until a signed purchase order or equivalent signed document has been provided by the client.

Any confidential or proprietary information which is acquired by PBC from a client company, person or entity will not be used or disclosed to any person or entity, except when required to do so by law. If required, PBC will sign and adhere to the conditions of any Confidentiality Agreement used by the client.

Any contract requiring PBC to work to specific deadlines provided within the written agreement will be deemed to include a proviso that the clients will make themselves reasonably available to communicate with PBC. If PBC deem them not to of been so then PBC cannot be held responsible for failing to meet a deadline.

PBC office hours are 9.00 a.m. to 5.00 p.m. Monday to Friday unless notified otherwise. Any claims must be made in writing to PBC within 7 days of receipt of goods. If no claim is made within this period the client is deemed to have accepted the goods at the agreed price.

PBC shall be under no liability if unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by suppliers or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the client may, by written notice to PBC, elect to terminate the contract and pay for work done and materials used but subject thereto shall otherwise accept delivery when available.