

# THE EDGE MEDIA GROUP - TERMS AND CONDITIONS OF TRADE

The following terms and conditions shall apply in relation to the supply of any services or goods by The Company or any of its subsidiary trading entities. They supersede all previous conditions and override any alternative conditions referred to by the Customer and constitute the entire agreement between The Company and the Customer.

## 1. Definitions

Unless inconsistent with the context, in these terms and conditions: -

**Company** means The Edge Media Group (Aust.) Pty Ltd (ABN: 62 086 257 392)

**Booking** means the booking period for which The Company has agreed to provide the Facilities to the Customer.

**Customer** means the person, firm or company using the services of The Company.

**Customer's Property** means any of the Customer's works, tapes, films or other materials, equipment or other property, which is the subject of the Facilities and is provided to The Company;

**Facilities** means the pre/production/post-production equipment, personnel, creative and production facilities and services that The Company is providing to the Customer in accordance with these terms and conditions;

**Materials** means all tapes, films, disks, documents or other materials provided by The Company pursuant to a booking.

## 2. Estimates

Whilst all estimates given by The Company are given in good faith and The Company will endeavour to adhere to such estimates, The Company, at its own discretion, will not be bound by such estimates. The Company will not be liable for any failure to meet such estimates. The Company will not be responsible for any costs, charges or expenses incurred by the Customer as a result of such failure. Notwithstanding any estimate given, The Customer agrees to pay the fee charged on the time booked or the actual time taken to complete the Customer's work (whichever is the greater) except for time elapsed not caused as a result of any act or omissions by the Customer.

## 3. Payment

(a) Except where these terms and conditions provide otherwise, and subject to paragraph [c] bellow, payment of all fees and charges incurred shall be made to The Company within 30 days of the date of invoice and The Company reserves the right to charge interest at a rate of 10% per month compounding on late payment and charge all expenses incurred in obtaining or attempting to obtain payment of overdue amounts to the Customer.

(b) All sums payable by the Customer shall be paid without any deduction whatsoever, whether by way of set-off, counterclaim or otherwise. The Company 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 Customer against The Company.

(c) The Company reserves the right to require payment of all fees and charges, in full or in part, in advance of the Booking Period.

(d) Any queries on the invoice must be raised within 14 days of the date of the invoice.

## 4. Part Completion

If completion of any work commissioned by The Company is rendered impossible by causes beyond the control of The Company, The Company shall be relieved of liability for such completion and full payment for work completed to that point shall be due to The Company by The Customer and under the Terms and Conditions outlined herein.

## 5. Cancellation

(a) In its absolute discretion, The Company may at any time permit cancellation by the Customer of a booking or order and reserves the right to cancel any booking or order in the event of any breach of these terms and conditions by The Customer.

(b) In the event of any such a cancellation being permitted or instigated by The Company less than one full 24 hour working day before the start of the Booking Period, the booking will be charged at 50% of the full rate.

(c) In addition to the above mentioned cancellation charges, The Company will be entitled to be reimbursed with any costs or expenses that it may have incurred with the knowledge and approval of the Customer.

#### **6. Lien and Delivery**

(a) Until payment in cash or cleared funds of all monies due from The Customer to The Company pursuant to a particular booking: - (i) the physical property in all Materials shall, notwithstanding delivery, remain vested in The Company;

(ii) The Company shall have a general lien over any property of the Customer in The Company's possession for such monies due; and (iii) the licence granted by The Company to the Customer pursuant to clause 8(b) shall not take effect.

(b) Furthermore, such property shall not pass to the Customer until The Company has also received payment in cash or cleared funds of all monies due from the Customer to The Company under any other booking or business transaction.

(c) The Customer hereby grants an irrevocable licence to The Company so that it may enter upon any premises where any Materials are stored or where they are reasonably thought to be stored, during normal business hours, and repossess the same. If the Customer fails to make payment within 14 days of such monies becoming due, The Company at its discretion shall be entitled to exploit or dispose of such property and apply any proceeds towards the monies due and be discharged from all liability in respect of any such property.

#### **7. Insurance**

(a) Risk of damage to or loss of the Materials shall pass to the Customer when The Company tenders delivery.

(b) The Customer acknowledges that it is not possible for The Company to obtain insurance against any lost costs arising from loss or damage to the Customer's Property.

(c) Accordingly, The Customer agrees with The Company to take out and maintain insurance cover against all risks as is necessary or usual.

#### **8. Intellectual Property in Materials**

(a) All copyright in any recordings or other works resulting from the provision of the Facilities and/or embodied in any Materials, other than materials being incorporated under separate license agreements, shall remain vested in and be the exclusive property of The Company until receipt of full payment by the Customer for the booking.

(b) Subject to The Company having received payment in cash or cleared funds of all monies due from the Customer, pursuant to a particular booking, The Company grants the Customer an exclusive licence to publish and transmit the finished product of the provision of the Facilities as a whole in its final form as supplied by The Company for the purpose originally contemplated.

(c) The Customer shall have no right whatsoever (and undertakes not) to use any Materials 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.

#### **9. Confidential Information**

(a) The Customer shall take all proper steps to keep confidential all confidential information relating to The Company or its business or financial affairs or the Facilities or other services provided by it, including but not limited to computer programs, production techniques, databases, ideas and concepts, knowledge, designs and processes incorporated in or inherent in the Materials, (other than information in the public domain).

(b) The Customer will not use or divulge any Confidential Information to any person (other than its professional advisers) and upon the termination of the Booking Period, the Customer will return to The Company any Confidential Information without retaining copies thereof and any equipment or other Materials provided by The Company.

#### **10. The Company's Liability**

(a) Save as otherwise expressly provided in these terms and conditions and to the fullest extent permitted by law;

(i) the supply to the Customer of Materials and Facilities are entirely at the Customer's risk and The Company shall be under no liability to the Customer or any other person for any direct, indirect or consequential loss or damage arising from any defect in the Facilities and the Materials or any equipment or media format used in relation thereto;

(ii) if the use of the Facilities for the booking is delayed, postponed, curtailed or cancelled for any reason affecting The Company, then unless such shall have been caused by the gross

negligence of The Company, The Company shall not be liable for any loss or damage suffered by the Customer by reason thereof; and

(iii) The Company shall not in any event be liable for economical loss (including loss of profit or goodwill) or any indirect or consequential loss or damage.

(b) Save as otherwise expressly provided in these terms and conditions and to the fullest extent permitted by law,

(i) The Company will not be responsible for any damage to or loss of any Customer's Property held by The Company nor any loss (consequential or otherwise) arising in respect thereof, unless caused by The Company's negligence.

(ii) In the event of loss or damage to the Customer's Property caused by The Company's negligence The Company's liability shall be limited to the costs charged by The Company.

(c) The Company shall not be responsible for ensuring that its equipment and the facility provided by it are suitable for the Customer's purpose.

(d) The Company shall not be liable for any reduction in the quality of its services that may be caused by the quality of the Customer's property or The Company's adherence to the Customer's instructions.

(e) The Customer shall indemnify The Company, its directors, and employees, sub-contractors and agents from and against all liabilities, actions and losses, claims, proceedings, judgments, 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 Customer's property or the acts or omissions of the Customer, agents or representatives, or any breach by the Customer of any of its representations, warranties or other obligations in these terms and conditions.

#### **11. Archiving**

(a) The physical archive remains the property of The Company at all times and The Company is indemnified from all costs incurred from the loss of said archives.

(b) The Customer does not imply any official backup or safety copy obligations to The Company.

(c) The intellectual property rights of the material found on the archive material are as described in clause 8.

(d) The Company shall be entitled to destroy, erase or otherwise dispose of as it thinks fit any materials or Customer's property in its possession and uncollected by the Customer after the expiration of one (1) year from the end of the booking period. The Company shall hold the Customer's Property at The Customer's own risk. The Company, to the best of its endeavours, will ensure the Customer has every opportunity and all necessary information to allow collection of said Customer's Property within the period as stated above.

(e) The Company shall be entitled to destroy, erase or otherwise dispose of as it thinks fit any archive media after seven (7) years from the end of the booking period without notice. (f) All costs incurred for transfer of materials shall be the responsibility of The Customer.

#### **12. Transfer of Obligations**

(a) The Company reserves the right to assign or sub-contract all or any part of its obligations to The Customer. (b) Any contract, which is made between The Company and The Customer, is personal to The Customer, who shall not assign or charge the benefit thereof without the express prior written consent of The Company.

#### **13. Representation and Warranties**

The Customer represents and warrants to The Company that:

(a) Before the commencement of the booking period it will obtain all consents licences and clearances required from any other person having any right or interest in connection with any of the Customer's property; and

(b) Nothing contained in the Customer's property will be in breach of any intellectual property or any other right of any third party.

#### **14. Force Majeure**

Neither The Company or The Customer shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**15. Termination** The Company shall, without prejudice to any other right or remedy which it may have, be entitled to terminate all of its obligations to the Customer upon the happening of any of the following events: - (a) If the Customer is at any time in breach of any obligation or representation or warranty to The Company, or any sum owing to The Company by The Customer is overdue by more than 14 days; or

(b) If the Customer makes or offers to make any composition with creditors or enters into a voluntary arrangement or if a bankruptcy petition is served on The Customer or (if the Customer is a limited company) any resolution or petition to wind up the Customers business is presented or if a receiver or administrative receiver is appointed to deal with any part of the Customers assets, the Customer will pay to The Company on demand all sums owing in respect of services already performed by The Company so as to fully indemnify The Company in respect of all liabilities incurred in consequence of compliance with the Customers instructions.

(c) Termination of the agreement does not operate to ameliorate The Customer from its/his/her obligations under the agreement.

**16. General**

(a) All notices given in accordance with these terms and conditions shall be in writing and may be delivered personally or sent by registered post to the usual or last known address of The Company or The Customer. 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.

(b) The Company's Standard Terms and Conditions of Trade are accessible electronically or as hard copy on request, and are publicly available at [www.temg.com.au](http://www.temg.com.au). Failure by any party or parties, for whatever reason, to access, request and/or obtain The Company's Standard Terms and Conditions of Trade, does not in any way absolve that party, or any party acting on their behalf, from compliance with said Standard Terms and Conditions of Trade.

**17. Governing Law**

This Agreement shall be governed by and construed under the law of the State of New South Wales. Any legal action in relation to this Agreement against the any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.